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CRIMINAL DOCKET

UNITED STATES DISTRICT COURT

No. 14102

JUDGE MILLER.

Title of case	Attorneys
THE UNITED STATES *vs.* GARY LEE ETHRIDGE; GEORGIA ETHRIDGE, 3206 Dove Place, Nash. 37218; WILLIAM EUGENE BEARD; JAMES HERMAN BOSTIC; JOHN W. LEEMAN, Box 7661; SAMMY RAY COLE; JAMES RICHARD SELF.	*For U.S.:* GILBERT MERRITT, JR.; THOS. C. BINKLEY Appt'd for Bostic; DALE QUILLEN for Leeman; JAMES H. BATEMAN for Self; Stahlman Bldg. & appointed.
EIGHT (8) COUNTS; VIOLATION: Title 18 USC.; Secs. 2113(a); 2113(b), 2113(c); 2113(d); 1071 and 2; Title 26 Sec. 5851; 5861.	*For Defendant:* Wm. C. Wilson, Stahlman Bldg (for Gary Ethridge & Georgia Ethridge) Appt'd for Cole; DALE QUILLEN appt'd by Wm. E. Beard.

Statistical record and costs	Date	Name or receipt No.	Rec.	Disb.
Bond 5,000.00 for Leeman; J.S. 2 mailed Lon McFarland—Clerk.	1-22-68	Gary Ethridge and Georgia Ethridge Notice of Appeal.	$10.00	
J.S. 3 mailed—Marshal	1-26-68	——— 32		$10.00
Violation—Docket fee				
Title				
Sec.				
Georgia Ethridge $25,000.00, Nash. Bonding Co. and Resolute Insurance Co.				

Date	Proceedings
9-26-67	Indictment filed (no BODs) BOP'S filed on Wm. Eugene Beard 8-23-67.
9-26-67	Praecipe for Warrant to arrest Gary Lee Ethridge filed.
9-26-67	Praecipe for Warrant to arrest Georgia Ethridge filed.
9-26-67	Praecipe for Warrant to arrest William Eugene Beard filed.
9-26-67	Praecipe for Warrant to arrest James Herman Bostic filed.
9-26-67	Praecipe for Warrant to arrest John W. Leeman filed.
9-26-67	Praecipe for Warrant to arrest Sammy Ray Cole filed.
9-26-67	Praecipe for Warrant to arrest James Richard Self filed.
9-26-67	Warrants issued as to all defendants; each of the seven (7) to the U.S. Marshal—with Xerox copy of Indictment to be delivered to each defendant.
9-28-67	Warrants as to both Ethridges returned executed; both in jail.
9-28-67	Warrant as to Leeman returned executed; defendant made bond.
9-27-67	Warrants as to Cole and Self returned executed; both in Metro jail.
10-2-67	Motion by defendant Gary Ethridge to set bail, Cert. service attached.
10-2-67	Motion by defendant Georgia Ethridge to reduce bail. Cert. service attached.
10-3-67	MOTION filed by James Richard Self for bail amount to be reduced as the $75,000.00 suggested bond is "unreasonable". Certificate of Service on.
10- 4-67	Motion to increase the bond of Georgia Ethridge from $25,000.00 to $75,000.00.
10- 4-67	Hearing on MOTIONS as to bonds, after testimony and arguments the Court is of opinion that motions are not well taken ORDER entered: (1) that of Cary Lee Ethridge to set bail is denied, and he will be held without bond; (2) motion of Georgia to reduce bond is denied; (3) motion of James Richard Self to reduce bond is denied and his bond will remain in amount of $75,000.00; (4) motion of the United States Attorney to increase the bond of Georgia Ethridge from $25,000.00 to $75,000.00 is denied. Attested copies to attorneys of record.
10- 4-67	Appearance Bond for Georgia Ethridge in the amount of $25,000.00 made by Nashville Bonding Co. and Resolute Insurance Company, this date.
10-11-67	Order entered pursuant to Rule 46(b) that Olympia Linda Letos give bail for her appearance as a witness in the amount of $10,000, failing which said Olympia Linda Letos shall be committed to the custody of the U.S. Marshal for the Middle District of Tennessee pending final disposition of this proceeding and further orders of this Court. 2 copies to U.S. Marshal.
10-17-67	ORDER to Produce Prisoner ad Prosequendum (James Herman Bostick) entered. Two attested copies to U.S. Marshal.

Date	Proceedings
10-17-67	ORDER to Produce Prisoner ad Prosequendum, (William Eugene Beard) entered. Two attested copies to U.S. Marshal.
10-18-67	Defendants, and EACH of them, P.N.G. ORDER entered that each of the seven defendants be allowed ten days within which to file pre-trail Motions and that the case be set for trial beginning on November 13, 1967 at 9:00 A.M. Attested copy to attorneys of record.
10-20-67	ORDER entered that U.S. Marshal for the Middle District of Tennessee proceed to Southern District of Georgia and take Olympia Linda Leto, into custody and return her to the Middle District of Tennessee to be held in custody of said Marshal pending disposition of the proceedings in this case (14,102) or further orders of this Court. Attested copy to U.S. Attorney and two to U.S. Marshal.
10-26-67	Motion for continuance filed by William Eugene Beard.
10-26-67	Motion for an extension of time to file motions by William Eugene Beard.
10-26-67	MOTIONS, (13 in number) filed by defendant Beard: as follows— 1. to Dismiss count one; 2. to Dismiss count five; 3. to Dismiss count eight; 4. to be furnished with any statements made by F.B.I., etc. 5. for Severance as to counts; 6. for Severance because of Misjoinder of Defendants; 7. for various data from U.S. Attorney—seven itemized. 8. for U.S. Attorney to afford a complete discovery of evidence he intends to offer in the trial as to Count eight; 9. for permission to inspect Grand Jury minutes; 10. for an Order directing an autopsy be performed on the body of James Larry Ferguson; 11. to suppress testimony of any witnesses who identified Beard in a "line-up" any time he was not afforded an opportunity to have his attorney present. 12. to suppress testimony of R. C. Goodwin; 13. to suppress testimony of any agent of the F.B.I. as said as may pertain to defendant's alleged possession of a shotgun and rifle on June 5, 1967. Certificate of Service on each of the thirteen motions.
10-27-67	MOTIONS filed by Defendant Wm. Eugene Beard;— 16. To transfer case to another District; 18. for Order directing U.S. Attorney to reveal any information as to this defendant obtained by wire tapping, etc. 19. for order directing the U.S. Attorney to furnish Bill of Particulars—in counts 6, 7 and 8 of the Indictment. Certificate of Service on each.

Date	Proceedings
10-27-67	MOTION filed by defendant John W. Leeman to be allowed to adopt motions heretofore filed on behalf of defendant Beard (listing numerals to which specific motion is directed—see motion in file). Certificate of Service on.
10-27-67	Motion by defendant James Herman Bostic that the trial of the seven defendants be separated. Copy to USDA.
10-30-67	MOTION filed by Defendant Wm. Eugene Beard— 20. to dismiss the indictment because of violation of Canon 9 of Canon of Prof. Ethics of the American Bar Association, etc; asks a separate hearing on this motion and upon said hearing the indictment be dismissed. Certificate on.
10-30-67	MOTION filed by defendant John W. Leeman for dismissal of indictment being deprived of his rights—"language of which is adopted insofar as it may be applicable in Motion No. 20, above. Certificate on.
10-30-67	ORDER entered that the Motion of Wm. Eugene Beard to extend time for filing pre-trial motions, and for a continuance of this case, be, and are denied. ORDERED that all pre-trial motions, filed by all defendants, are set for hearing at (:00 A.M. November 6, 1967. A xerox copy to attorneys . . . (hand).
10-31-67	MOTION filed by Wm. Eugene Beard for an order to allow him to subpoena witnesses on his behalf in support of pre-trial motions and on the trial of the case because he is without funds or property (affidavit of poverty attached). Certificate of service on,
10-31-67	Order entered, by consent of the Government, directing that an autopsy be performed on the body of James Larry Ferguson, with consent of James H. Ferguson filed. Copy to attorneys of record.
11- 1-67	MOTION filed by Wm. E. Beard, 21. again for dismissal of indictment (this time "as drafted") in all counts listed are items regarded as 'prejudiced, etc. Certificate on.
11- 1-67	Order entered that the motion of William E. Beard to subpoena witnesses is overruled. If the defects of the motion pointed out in this order are supplied, the said defendant would be entitled to the relief sought by the motion. Copy to USDA and to Atty. Quillen.
11- 3-67	ORDER to Produce Prisoner ad Prosequendum (Jas. H. Bostic) on Nov. 6, 1967 at 8:00 A.M. Two copies to U.S. Marshal and one to U.S.D.A.
11- 3-67	ORDER to Produce Prisoned ad Prosequendum (Wm. Eugene Beard) on Nov. 6, 1967 at 8:00 AM. Copy to USDA & two to U.S. Marshal.

Date	Proceedings
11- 7-67	Order entered that the order of October 18, 1967 be amended by striking therefrom the words "who was appointed by the Court to represent him" as they apply to the defendant John W. Leeman, as Mr. Quillen was the paid attorney of record for John W. Leeman.
11- 8-67	ORDER to Procedure Prisoner Ad Prosequendum—James E. Bostic;
11- 8-67	ORDER to Procedure Prisoner Ad Prosequendum—Wm. Eugene Beard; two attested copies of EACH to U.S. Marshal and one each to U.S. Attorney.
11-13-67	Motion to dismiss the indictment or in the alternative to suppress all testimony of John W. Leeman, filed by defendant Eugene Beard. Certificate of service attached.
11- 7-67	MOTIONS considered after hearing counsel and the evidence the Court RULED: 1. Granted U.S. Attorney's motion to sever for purpose of trial of defendant John W. Leeman as he will testify as witness for Government. 2. Granted Quillen's motion to withdraw as Leeman's counsel. 3. Appointed Jack Lowery of Lebanon Bar as additional counsel to serve jointly with Mr. Quillen (both appointed). 4. Reserved ruling on motion to dismiss Count One as duplicitous—filed by Beard and joined in by both Ethridges, Self and Bostic. 5. Motion No. 2 rendered Moot by virtue of the action of the Court With respect to Motion No. 5 (later discussed). 6. Motion No. 3 to dismiss Count Eight, overruled. 7. Motion No. 4 for discovery (by all defendants) Government agrees to furnish each defendant his statements as made to federal law enforcement officers and such other as are in custody of the Government. Court ORDERED that these be furnished by 4:30 Nov. 7, 1967 if possible. 8. Motion No. 5, for severance of Counts Four and Five of indictment is granted. 9. Motion No. 6 for severance of defendants filed by Beard and joined in by others was under advisement and reserved ruling, thereon. 10. Motion No. 7, for discovery filed by Beard and joined in by all others; Government agrees to furnish each a list of names and addresses of all witnesses know to U.S. Attorney to be called as witnesses (to be furnished by 4:30 Nov. 7, 1967) and copy of statements made by James Larry Fergusor to federal agents insofar as are relevant to any offense charged—such to be furnished by 9:00 A.M. November 9, 1967; and to make available for observation by defense counsel any evidence taken from auto, including a shirt found in automobile.

Date	Proceedings
	11. Motion No. 8 for 'further' discovery overruled.
	12. Motion No. 9 for inspection of grand jury minutes, not well taken and overruled.
	13. Motion No. 10 for autopsy of James Larry Ferguson, the Court had previously granted same—no further action.
	14. Motions, Nos. 11, 12 and 13 to suppress testimony filed by defendant Beard—No. 11 being joined in by all others; No. 12 being joined in by defendant Self, No. 13, being joined in by Ethridges and Cole—overruled at present. Leave is granted to renew said motions at the trial; Court rules that the pistol taken from defendant Gary Ethridge on or about Sept. 24, 1967 should not be introduced in evidence.
	15. Motion No. 14 for continuance filed by Beard only and residted by the Government, Georgia and Gary Ethridge and Cole—overruled.
	16. Motion No. 15 for additional time for pretrial motions—overruled.
	17. Motion No. 16 for change of venue, by defendant Beard and others, (except Self) Court reserved ruling until voir dire of the jury is conducted to determine if a fair and impartial trial jury can be obtained in this district.
	18. Motion No. 17—Beard, and joined in by both Ethridges, Cole & Bostic—overruled.
	19. Motion No. 18—Government has no evidence or leads or other information obtained by wire tapping, etc. as stated by U.S. Attorney.
	20. Motion No. 19—for Bill of Particulars, Court took under advisement and reserved ruling.
	21. Motion No. 20—to dismiss—overruled but ruled further that the Court's action upon this motion does not affect and is not a ruling upon the defendants' motion heard in chambers on Nov. 6, 1967.
	22. Motion No. 21 to dismiss Count One—under advisement and reserved ruling.
	23. ORDERED Clerk to furnish each defendant with name and place of abode of each venireman to be called for jury service in this case—same by November 7, 1967.
	24. Court granted Government's motion for discovery Rule 16(c)—ORDERED defendants to permit Government to inspect any scientific reports, etc., intended for use in the trial; same to be furnished by defendants as soon as they or any one of them determines such evidence will be introduced at the trial.

Date	Proceedings
	25. Oral motion of Beard, for Government to furnish background information it may have concerning veniremen to be called for jury service—overruled.
	Copies of this seven-page ORDER handed to defendants' attorneys and U.S. Attorney in open court.
11-13-67	Selection of Jury not having been completed the prospective jurors were instructed to return at 9:00 A.M. Nov. 14, 1967; Court adjourned until said hour. Copy to attorneys.
11-14-67	Only one juror selected—hour for adjournment having arrived jurors all instructed to return at 9:00 A.M. Nov. 15, 1967, at 9:00 A.M.
11-15-67	Three Jurors selected; the remaining prospective jurors instructed to return November 16, 1967. Copies to attorneys.
11-16-67	Four additional jurors selected, hour of adjournment having arrived—prospective jurors instructed to return on Nov. 17, 1967 at 9:00 A.M.
11-17-67	Four additional jurors and four alternate jurors selected making the jury composed of the following listed persons: Mrs. Versa Hodges; Crosby Moore; Robert H. Hamilton; Mrs. J. B. Singleton; Mrs. Katherine Barnhill; Mrs. J. J. Frey; Baxter Luton; Carl W. Eby; J. Marvin Hayes; P. S. Hennessey; Harold Gaines; and Joe A. Boone, and alternate jurors, Mrs. W. B. Crouch, Herman Burton, Jr., Frank Reed and Willard A. Akins.
	The hour for adjournment having arrived the jury was respited until 9:00 A.M. November 20th, 1967. Copy to attorneys.
11-22-67	ORDER to Produce Prisoner ad Testificandum (Roy Letson) on Nov. 22, 1967 by 4:00 P.M. Two copies to U.S. Marshal & the U.S. Attorney.
11-20-67	Jury impaneled; Jury respited until Nov. 21, 1967. Copy to attorneys.
11-24-67	Order to Produce Prisoner ad Testificandum as to Leroy Bracey on November 27, 1967. 2 copies to Marshal & one to U.S. Attorney.
11-21-67	Jury respited until 9:00 A.M. November 22, 1967.
11-22-67	Jury respited until November 24, 1967 at 9:00 A.M.
11-24-67	Jury respited until November 27, 1967 at 9:00 A.M.
11-27-67	Jury respited until November 28, 1967 at 9:00 A.M.
11-28-67	ORDER to Produce Prisoner ad Testificandum (Everette Lee Starks) on Nov. 28, 1967—9:00 AM. Two copies to U.S. Marshal; one to USDA.
11-28-67	ORDER to Produce Prisoner ad Testificandum (Bobby Gail Knight) on Nov. 28, 1967—9:00 AM. Two copies to U.S. Marshal; one to USDA.
11-28-67	Jury respited until November 29, 1967, at 9:00 A.M.
11-29-67	Jury respited until November 30, 1967, at 9:00 A.M.
11-30-67	Jury respited until December 1, 1967, at 9:00 A.M.
12- 1-67	Jury respited until December 4, 1967.

Date	Proceedings
12- 4-67	Motion to subpoena witnesses filed by defendant William Eugene Beard.
12- 5-67	Order entered directing Clerk to issue subpoenas to Earl Hawkins, Leon Chambers' George Russell and Eugene Rose on behalf of the defendant William Eugene Beard, said witnesses to appear on December 8, 1967, said costs and witnesses fees to be paid by the United States. Subpoenas issued. Two copies to U.S. Marshal and to U.S.D.A.
12- 4-67	Jury respited until December 5, 1967.
12- 5-67	Jury respited until December 8, 1967.
12- 8-67	Subpoena to testify issued to Robert Armstrong to appear instanter on behalf of defendant William Eugene Beard.
12- 8-67	Subpoena returned as to Fobery Armstrong; Eugene Rose; and Earl Hawkins executed.
12- 8-67	Order to produce prisoner ad prosequendum, James H. Bostic, returned executed.
12-11-67	Subpoena returned executed as to Sherrie Elaine Meadors; John T. Vaughn; Roy Letson; William Harding; Hugh Bradley; Jimmy Allen Freeman; Leslie Marie Belcher; Stanley Garland; Judith Farmer; Shirley Burton; Maxie Carney; Jackie Corbin; Judy Sineath; Don Monday; and John W. Leeman.
12-11-67	Subpoena to Testify returned un-executed as to James Bollin Yeargin.
12-11-67	Subpoena to Produce Document returned un-executed as to Florence Misenheimer at the request of the USA at Nashville, Tenn.
12-11-67	Subpoena to Produce returned executed as to O. F. McBride.
12-11-67	Order to produce prisoner ad Testificandum returned executed as to Bobby Gail Knight, who appeared in Court November 28, 29, 1967.
12- 8-67	Jury respited until December 11, 1967.
12-11-67	Jury respited until December 12, 1967.
12-12-67	Jury respited until December 14, 1967.
12-14-67	Motion by defendant William Eugene Beard for the Court to withdraw overt Act No. 8 from consideration by the jury.
12-14-67	Motion by defendant William Eugene Beard for the Court to withdraw overt Acts Nos. 10 and 11 from the consideration of the jury.
12-14-67	Motion by defendant William Eugene Beard for a judgment of acquittal.
12-14-67	Jury respited until December 15, 1967.
12-15-67	Government's Requested instructions filed.
12-15-67	Defendants' requested instructions filed.
12-15-67	Jury respited until December 16, 1967.

Date	Proceedings
12-16-67	Order entered on jury verdict: GARY LEE ETHRIDGE found guilty under each the 1st, 2nd, 3rd and 8th counts, and not guilty under the 7th count: GEORGIA ETHRIDGE found guilty under the 1st count, and not guilty under the 2nd and 3rd counts; WILLIAM EUGENE BEARD found guilty under the 1st, 7th and 8th counts, and not guilty under the 6th count: JAMES HERMAN BOSTIC found guilty under each the 1st, 2nd and 3rd counts: SAMMY RAY COLE found guilty under each the 1st, 2nd and 3rd counts; JAMES RICHARD SELF found guilty under the 1st count and not guilty under the 6th and 7th counts. Further Ordered that GARY LEE ETHRIDGE be discharged under the 7th count upon the jury verdict of not guilty; GEORGIA ETHRIDGE discharged under each the 2nd and 3rd counts upon the jury verdict of not guilty: WILLIAM EUGENE BEARD discharged under the 6th count upon the jury verdict of not guilty; and JAMES RICHARD SELF discharged under the 6th and 7th counts upon the jury verdict of not guilty. Judgment reserved as to each of the defendants under the counts of which the jury found them guilty, until 9:00 A.M., December 21, 1967. GEORGIA ETHRIDGE allowed to remain on her present bond until December 21, 1967. Each of the defendants is allowed until January 8, 1968 within which to file motions for new trial. (Copy of Order mailed to each attorney of record.)
12-18-67	Order entered directing U.S. Marshal to prepare a voucher and issue check to the Noel Hotel covering expenses of the sequestered jury. Two copies to U.S. Marshal.
12-20-67	Court conducted a further hearing on November 13, 1967 upon pre-trial motions heretofore filed by the Parties—whereupon the Court: 1. Overruled the oral motion of defendant Wm. Eugene Bostic for continuance of case. 2. Overruled the Motion to dismiss Count one as duplicitous. 3. Upon Motion No. 6, for severance—considered not well taken and overruled. 4. Upon Motion No. 19, for Bill of Particulars; considered not well taken, and overruled. 5. Upon Motion No. 21, to dismiss count One; considered not well taken and overruled. 6. Upon motion filed by the defendants, to suppress testimony of John W. Leeman and testimony furnished by leads obtained from him (or in the alternative to grant Beard a severance and separate trial); Court finds said not well taken and is overruled. Xerox copies that have been attested to all attorneys of record.

Date	Proceedings
12-21-67	JUDGMENT as to GARY LEE ETHRIDGE: 1st count: five (5) years. 2nd count: Twenty (20) years. 3rd count: Ten (10) years. 8th count: Fifty (50) years. Sentences to run concurrently with each other. JUDGMENT as to GEORGIA ETHRIDGE: 1st count: Four (4) years. Execution of sentence imposed herein is suspended pending termination of appeal, and the defendant will remain on her present bond. JUDGMENT as to WILLIAM EUGENE BEARD: 1st count: Five (5) years. 7th count: Ten (10) years. 8th count: Fifty (50) years. Sentences to run concurrently with each other JUDGEMENT as to JAMES HERMAN BOSTIC: 1st count: Five (5) years. 2nd count: Twenty (20) years. 3rd count: Ten (10) years. Sentences under the 2nd and 3rd counts to run concurrently with each other but consecutively to the sentence under the 1st count. Sentence imposed herein to run consecutively to the sentence the defendant is now serving in the Tennessee State Penitentiary. JUDGEMENT as to SAMMY RAY COLE: 1st count: Five (5) years. 2nd count: Fifteen (15) years. 3rd count: Ten (10) years. Sentences to run concurrently with each other. JUDGEMENT as to JAMES RICHARD SELF: 1st count: Five (5) years.
12-21-67	Notice of Appeal filed by Gary Lee Ethridge;
12-21-67	Notice of Appeal filed by Georiga Ethridge:
12-21-67	Motion for Leave to Appeal in Forma Pauperis with affidavit attached, filed by William Eugene Beard.
12-21-67	Notice of Appeal filed by William Eugene Beard.
12-21-67	Motion for Leave to Appeal in Forma Pauperis with affidavit attached, filed by James Herman Bostic.
12-21-67	Notice of Appeal filed by James Herman Bostic.
12-21-67	Motion for Leave to Appeal in Forma Pauperis with affidavit attached, filed by Sammy Ray Cole.
12-21-67	Notice of Appeal filed by Sammy Ray Cole.
12-21-67	Motion for Leave to Appeal in Forma Pauperis with affidavit attached, filed by James Richard Self.
12-21-67	Notice of Appeal filed by James Richard Self. (Copy of each Notice of Appeal and Motion for Leave to Appeal in Forma pauperis delivered to U.S. Attorney.

Date	Proceedings
12-22-67	Order entered setting hearing of arguments on the defendants' motion for judgement of acquittal, at 9:00 A.M., January 11, 1968. Copy to U.S. Attorney and each attorney of record.
12-26-67	Mitt issued for Gary Lee Ethridge: Mitt issued for Georgia Ethridge: Mitt issued for William Eugene Beard: Mitt issued for James Herman Bostic: Mitt issued for Sammy Ray Cole: Mitt issued for James Richard Self:
12-26-67	Statement of Docket Entries, for each defendant, mailed to Clerk, U.S. Court of Appeals.
12-29-67	O. C. R. transcript filed of the following witnesses: Paul Michael Bates; Everett Lee Starks; Melvin Porterfield; John W. Leeman; Perry Wilson Patten; Maxie Vernon Carney; Olympia Linda Letos; Judith Carolyn Farmer; Charles Bobo; Donald Edward Ferguson; Bryant Armstrong; and Cross Examination of William Eugene Beard.
1-2-68	Mitt as to Gary Lee Ethridge returned executed; deft. in Atlanta, Ga.
1-3-68	Mitt as to Sammy R. Cole returned; in F. C. Institute, Tallahassee, Fla.
1-11-68	Order entered directing the Court Reporter to furnish two copies of the transcript of the testimony of Bryant Armstrong, Paul Bates, Charles Bobo, Donnie Ferguson, Perry Patton, John Leeman, Melvin Porterfield, Everette Lee Starks, Linda Letos, Judy Farmer, Maxie Carney, and the cross examination of William Eugene Beard, to the defendants, who moved the Court that they be furnished said copies of the above named witnesses, and that the cost be paid by the United States as the defendants are paupers and unable to pay for said transcript. (Two copies to Court Reporter)
1-12-68	Order entered denying each of the defendant's motion for judgment of acquittal. Copy to Attorneys of Record and to the defendants.
1-24-68	Order entered allowing the defendants William Eugene Beard, James Herman Bostic, Sammy Ray Cole and James Richard Self to appeal in forma pauperis; further ordering that the Court prepare a transcript of all of the proceedings beginning with the arraignment on October 18, 1967 through the sentencing on December 21, 1967, to be made a part of the record on appeal, and to be paid by the United States; further Ordering that the Court Reporter furnish each of the defendants William Eugene Beard, James Herman Bostic, Sammy Ray Cole and James Richard Self a copy of the above said transcripts which are to be paid for by the United States as each of the defendants are pauperis and unable to pay the costs. Copy to Attorneys of Record, U.S.D.A. and 2 copies to Court Reporter.

Date	Proceedings
1-24-68	Subpoena to testify returned executed as to Jimmy Allen Freeman and John R. Knox.
1-30-68	Order entered extending time to file record on appeal to April 12, 1968. Copy to attorneys of record and to Court Reporter.
2-14-68	Mitt returned, as to James R. Self, defendant in Federal Reformatory ElReno, Okla.
2-20-68	Motion to Dismiss the indictment as to the defendant John W. Leeman because the defendant was recently killed, filed by U.S. Attorney. Two copies to USDA.
2-20-68	Order entered dismissing the indictment as to the defendant John W. Leeman because of his death. Two copies to USDA.
4-9-68	Order entered extending time to file record on appeal to June 28, 1968. Copy to Attorneys of record.
6-14-68	MOTION filed by U.S. Attorney to dismiss counts four and five, as to William Eugene Beard, et als—the defendants having received substantial sentences on other counts in this indictment.
6-14-68	ORDER entered that counts four and five in this case be, and same are dismissed. Copy to U.S. Attorney.
6-27-68	Order entered extending time to file record on appeal until September 6, 1968. Copy to attorneys of record.
7-12-68	Motion for Psychiatric Examination filed by Gary Lee Ethridge, Cert. of service attached.
7-17-68	Motion by United States Attorney to dismiss the motion for psychiatric examination. Certificate of service attached.
7-23-68	ORDER entered that the motion of defendant Gary Lee Ethridge for an order by the Court directing a psychiatric examination is overruled.
7-29-68	O.C.R. transcript filed of Pre-Trial Proceedings of October 4, 18, 26, 31, Nov. 6 and 7, 1967, and of Trial Proceedings November 13, through December 21, 1967. 24 Volumes.

[Filed Sep. 26, 1967, Brandon Lewis, Clerk, by Edith C. Land, D.C.]

United States District Court for the Middle District of Tennessee, Nashville Division

Criminal No. 14102; 18 U.S.C. §§ 2113(a); 2113(b); 2113(c); 2113(d); 1071 and 2; 26 U.S.C. §§ 5851; 5861

UNITED STATES OF AMERICA

vs.

GARY LEE ETHRIDGE, GEORGIA ETHRIDGE, WILLIAM EUGENE BEARD, JAMES HERMAN BOSTIC, JOHN W. LEEMAN, SAMMY RAY COLE, JAMES RICHARD SELF

INDICTMENT

COUNT ONE

The Grand Jury charges:

Prior to April 24, 1967, the specific date being unknown to the Grand Jury, until the date of this indictment, within the Nashville Division of the Middle District of Tennessee, GARY LEE ETHRIDGE, GEORGIA ETHRIDGE, WILLIAM EUGENE BEARD, JAMES HERMAN BOSTIC, JOHN W. LEEMAN, SAMMY RAY COLE, JAMES RICHARD SELF and JAMES LARRY FERGUSON, conspired together to commit offenses against the United States, that is, to take, by force and violence, money belonging to and in the care, custody and control of banks insured by the Federal Deposit Insurance Corporation; to enter Federally insured banks with the intent and purpose of committing larceny; to knowingly receive, possess and conceal money taken from Federally insured banks in violation of Title 18, United States Code, Section 2113(b); and, in committing offenses defined by Title 18, United States Code, Section 2113(a), to assault and put in jeopardy the lives of employees of Federally insured banks, by the use of dangerous weapons; in violation of Title 18, United States Code, Section 2113(a)(c) and (d).

To effect the objects of this conspiracy, the defendants and co-conspirators committed the following overt acts:

419-039—71——2

1. On or about April 24, 1967, JAMES HERMAN BOSTIC and JAMES LARRY FERGUSON took, by force and violence, money in the care, custody and control of the Bordeaux Branch of Commerce Union Bank, Nashville, Tennessee, the deposits of which were insured by the Federal Deposit Insurance Corporation.

2. On or about April 24, 1967, in Nashville, Tennessee, GEORGIA ETHRIDGE and SAMMY RAY COLE assisted James Larry Ferguson and James Herman Bostic in making their escape from the Bordeaux Branch of Commerce Union Bank, after Ferguson and Bostic had committed the offense described as the first overt act herein.

3. On or about April 24, 1967, GARY LEE ETHRIDGE and JOHN W. LEEMAN, received and concealed money unlawfully taken from the Bordeaux Branch of Commerce Union Bank, knowing it to have been so taken.

4. On or about May 3, 1967, in Nashville, Tennessee, GARY LEE ETHRIDGE and SAMMY RAY COLE attempted to induce Everette Lee Starks to join the conspiracy charged herein, and, in particular, to assist James Larry Ferguson, and others, in committing bank burglaries within the Middle District of Tennessee.

5. In May, 1967, in Nashville, Tennessee, GARY LEE ETHRIDGE, GEORGIA ETHRIDGE, WILLIAM EUGENE BEARD, and JAMES LARRY FERGUSON, discussed and planned an intended robbery of the Thompson Lane Branch of Commerce Union Bank, Nashville, Tennessee.

6. On or about May 15, 1967, GARY LEE ETHRIDGE, WILLIAM EUGENE BEARD, and JAMES LARRY FERGUSON entered the Bank of Orlinda, Orlinda, Tennessee, a bank having deposits insured by the Federal Deposit Insurance Corporation, with the intent to commit larceny.

7. On or about June 5, 1967, in Nashville, Tennessee, WILLIAM EUGENE BEARD possessed an unregistered firearm in operable condition, namely a sawed-off Savage Shotgun Rifle.

8. On or about June 5, 1967, in Nashville, Tennessee, WILLIAM EUGENE BEARD wilfully harbored and concealed James Herman Bostic, knowing that a Federal warrant had been issued for Bostic's arrest, and also knowing that Bostic had participated in the robbery of Commerce Union Bank on April 24, 1967.

9. On or about August 3, 1967, WILLIAM EUGENE BEARD and JAMES RICHARD SELF took, by force and violence, money in the care, custody and control of the Third National Bank of Nashville, Tennessee.

10. In September, 1967, GARY LEE ETHRIDGE counseled and induced William Eugene Beard to kill James Larry Ferguson, in order to prevent Ferguson from revealing the criminal offenses described in this indictment to law enforcement agents, or to others.

11. On or about September 23, 1967, within the Nashville Division of the Middle District of Tennessee, WILLIAM EUGENE BEARD wilfully shot and killed James Larry Ferguson.

In violation of Title 18, United States Code, Section 371.

COUNT TWO

And the Grand Jury further charges:

On or about the 24th day of April 1967, at Nashville in the Middle District of Tennessee, JAMES HERMAN BOSTIC, GARY LEE ETHRIDGE, GEORGIA ETHRIDGE, JOHN W. LEEMAN and SAMMY RAY COLE, by force and violence and by intimidation, did take from the person and presence of employees of the Bordeaux Branch of the Commerce Union Bank, $29,025.17 in money, belonging to and in the care, custody, control, management and possession of said Bank, the deposits of which were then insured by the Federal Deposit Insurance Corporation.

In violation of 18 U.S.C., §§ 2113(a) and 2.

COUNT THREE

And the Grand Jury further charges:

On or about the 24th day of April, 1967, at Nashville, in the Middle District of Tennessee, JAMES HERMAN BOSTIC, GARY LEE ETHRIDGE, GEORGIA ETHRIDGE, JOHN W. LEEMAN and SAMMY RAY COLE did posses money in excess of $100 which had been taken and carried away, with intent to steal and purloin from the Bordeaux Branch of the Commerce Union Bank, the deposits of which were insured by the Federal Deposit Insurance Corporation, and they then knew said money to have been so taken.

In violation of Title 18, United States Code, Sections 2113(c) and 2.

COUNT FOUR

And the Grand Jury further charges:

On or about the 5th day of June, 1967, in the Middle District of Tennessee, WILLIAM EUGENE BEARD, having notice and with knowledge that a federal warrant of arrest had been issued for the apprehension of JAMES HERMAN BOSTIC on an indictment charging James Herman Bostic with unlawful flight to avoid confinement, a felony, in violation of the laws of the United States, and having notice and with knowledge of the fact that James Herman Bostic was in fact a fugitive from justice and was evading arrest and apprehension on said warrant, wilfully and knowingly, and for the purpose of preventing his discovery, and for the purpose of preventing his arrest on said warrant, did harbor and conceal James Herman Bostic in the City of Nashville.

In violation of Title 18, United States Code, Section 1071.

COUNT FIVE

And the Grand Jury further charges:

On or about the 5th day of June, 1967, in the Middle District of Tennessee, WILLIAM EUGENE BEARD, wilfully and knowingly did possess a firearm, that is, a Savage 245A shotgun and rifle, 22 caliber over 410 gauge combination, with no serial number, having a barrel length of 7⅞ inches, and an overall length of 15⅛ inches, which had not been registered with the Secretary of the Treasury or his delegate, as required by Section 5841, Title 56, United States Code.

In violation of Title 26, United States Code, Sections 5851 and 5861.

COUNT SIX

And the Grand Jury further charges:

On or about the 3rd day of August, 1967, in the Middle District of Tennessee, WILLIAM EUGENE BEARD and JAMES RICHARD SELF did enter Third Avenue and Lafayette Branch of the Third National Bank, the deposits of which were then insured by the Federal Deposit Insurance Corporation, with intent to commit in such bank a felony affecting such bank, that is, the taking by force and violence and by intimidation and from the presence of employees of such bank, money

belonging to and in the care, custody, control, management, and possession of the bank.

In violation of Title 18, United States Code, Sections 2113(a) and 2.

COUNT SEVEN

And the Grand Jury further charges:

On or about the 3rd day of August, 1967, at Nashville, in the Middle District of Tennessee, WILLIAM EUGENE BEARD, JAMES RICHARD SELF, and GARY LEE ETHRIDGE, did possess money in excess of $100 which had been taken and carried away, with intent to steal and purloin from the Third and Lafayette Branch of the Third National Bank, the deposits of which were insured by the Federal Deposit Insurance Corporation, and they then knew said money to have been so taken.

In violation of Title 18, United States Code, Sections 2113(c) and 2.

COUNT EIGHT

And the Grand Jury further charges:

On or about September 23, 1967, at or near Wilson County in the Middle District of Tennessee, WILLIAM EUGENE BEARD and GARY LEE ETHRIDGE, in avoiding and attempting to avoid apprehension for the commission of offenses under Title 18, United States Code, Section 2113, which offenses are heretofore described in this indictment and incorporated in this count by reference, did kill James Larry Ferguson.

In violation of Title 18, United States Code, Sections 2113(e) and 2.

A TRUE BILL:

HAROLD D. BAKER, *Foreman.*

GILBERT MERRITT, Jr., *United States Attorney.*

No. —

United States District Court, Middle District of Tennessee, Nashville Division

THE UNITED STATES OF AMERICA

GARY LEE ETHRIDGE; GEORGIA ETHRIDGE; WILLIAM EUGENE BEARD; JAMES HERMAN BOSTIC; JOHN W. LEEMAN; SAMMY RAY COLE; JAMES RICHARD SELF

INDICTMENT

18 U.S.C., §§ 2113(a); 2113(b); 2113(c); 2113(d); 2113(e); 1071 and 2; 26 U.S.C. §§ 5851 and 5861

A true bill,

Foreman.

Filed in open court this ____ *day of* ____, *A.D. 19—* ____

Clerk.

*Bail, $*____

[Filed Oct. 26, 1967, Brandon Lewis, Clerk, by Edith C. Land, D.C.]

United States District Court for the Middle District of Tennessee, Nashville Division

Nashville Criminal No. 14,102, Motion No. 5

UNITED STATES OF AMERICA

vs.

WILLIAM EUGENE BEARD

MOTION FOR SEVERANCE AS TO COUNTS IN THE INDICTMENT

The defendant, William Eugene Beard, moves the Court that he be granted a severance as to counts four and five of the indictment for reasons as follows:

(1) That he will be prejudiced if compelled to stand trial on Count 5 of the indictment at the same time he is being tried on other counts in which he is charged for the reason that the statute upon which that count is based is a revenue act.

(2) That sections 5851 and 5861 of Title 26 of the U.S.C.A. upon which count five of the indictment is based is unconstitutional for the reasons more particularly set forth in defendant's Motion No. 2 filed in this case.

(3) That the matters with which the defendant is charged in count five of the indictment is so unrelated as to subject matter to the other counts of the indictment. That he will be prejudiced if he is compelled to be tried on such a charge with the other counts.

(4) That James Herman Bostic is a material witness for the defendant in count 4 and count 5 of the indictment. This is the same James Herman Bostic named in count 4 who was also charged in other counts of the indictment. If the defendant is required to go to trial on counts 4 and 5 of the indictment, he may be deprived of the testimony of James Herman Bostic who will have a right not to testify in this case for the reason that he will also be on trial for charges in other counts of said indictment.

(5) That the said James Herman Bostic, the defendant's witness, will be embarrassed and prejudiced and that said embarrassment and prejudice will reflect upon and thereby prejudice the defendant, William Eugene Beard.

(6) That the proper venue for the trial of the defendant as to Counts 4 and 5 is at Nashville in the Middle District of Tennessee while the proper venue for the trial of Count 8 of the indictment is not shown in that said count to be at Nashville, Tennessee. Section 3235, Title 18, U.S.C.A. provides:

> "The trial of offenses punishable with death shall be had in the county where the offense was committed, where that can be done without great inconvenience."

Section 3236 provides:

> "In all cases of murder or manslaughter the offense shall be deemed to have been committed at the place where the injury was inflicted, or the poison administered or other means employed which caused the death, without regard to the place where the death occurs."

Count 8 of the indictment merely alleges that the offense occurred "at or near Wilson County in the Middle District of Tennessee."

In summary, the defendant insists that there is a misjoinder of offenses in this indictment, especially as to counts 4 and 5 and, therefore, prays that he be granted a severance and a separate trial at Nashville, Davidson County, Tennessee as to Counts 4 and 5.

Respectfully submitted.

DALE QUILLEN.

[Filed Oct. 26, 1967, Brandon Lewis, Clerk, by Edith C. Land, D.C.]

United States District Court for the Middle District of Tennessee, Nashville Division

Nashville Criminal No. 14,102; Motion No. 6

UNITED STATES OF AMERICA

vs.

WILLIAM EUGENE BEARD

MOTION FOR SEVERANCE BECAUSE OF MISJOINDER OF DEFENDANTS

The defendant, William Eugene Beard, moves that he be granted a severance as to Count 8 of the indictment and as to Counts 4 and 5 of the indictment for the reason that he will be prejudiced as a result of the misjoinder of defendants. In other words, he will be deprived of the testimony of James Herman Bostic as stated in Motion No. 5.

Defendant further contends that the subject matter of the various counts of the indictment in which he is charged and the subject matter of the counts in which the other defendants are charged is so unrelated as to be confusing to a jury and that testimony relating to the minor offenses would prejudice him in his defense of the more serious charges and *vice versa*.

That he will be prejudiced if compelled to be tried for a capital offense which, if being tried separatedly, would not admit proof of matters which might be offered and properly

admissible under the exception to the hearsay evidence rule relating to conspiracy.

In other words, defendant contends that he is in great danger and in all probability will be prejudiced in attempting to defend the capital offense by the testimony relating to other defendants and other offenses which would not be admissible if he and his co-defendant in Count 8 are being tried separatedly and apart from the other defendants who were not charged in Count 8.

In summary, the defendant avers that there is a misjoinder of defendants in the 8th count of the indictment.

Respectfully submitted.

DALE QUILLEN,
Attorney.

[Filed Oct. 26, 1967, Brandon Lewis, Clerk, Guy W. Cooper, D.C.]

United States District Court for the Middle District of Tennessee, Nashville Division

Nashville Criminal No. 14,102, Motion No. 14

UNITED STATES OF AMERICA

vs.

WILLIAM EUGENE BEARD

MOTION FOR A CONTINUANCE

The defendant, William Eugene Beard, respectfully moves the Court for a continuance of his case which is presently set for trial on November 13, 1967, for reasons as follows:

(1) That it will take a minimum of three weeks and in all likelihood a greater amount of time to conclude the trial of the case. That it will conflict with the case of State of Tennessee vs. John Henry Gant which has heretofore been set specially for trial in the Criminal Court of Davidson County, Tennessee, to commence on November 27, 1967. That the defendant in that case has been in jail awaiting trial for many months, having been denied bond. That counsel verily believes that the State Court was influenced in its order denying bail to defendant,

Gant, by the actions of the United States District Court at Nashville. The State Attorney General in opposing Gant's application for bond cited the actions of the Hon. William E. Miller, District Judge. In his opposition to bail, Judge Miller had entered an order finding that the defendant, Gant, posed a threat to the community. In other words, we insist that the defendant, Gant, should not be deprived of the right to go to trial on November 27 by any action of this honorable Court because he has been denied bail by the influence of this highly respected Court. Counsel, therefore, represents to the Court that it would be impossible to prepare and try the Gant case in the State Court as scheduled if this case is commenced on the 13th day of November.

(2) That the defendant's counsel, Dale Quillen, needs more time than is available to prepare to defend the case.

(3) That said defendant would be prejudiced at the present time in the Middle District of Tennessee by the wide-spread publicity which has been given to the case by newspapers, television, radio and otherwise. For example, the various news media have carried reports purportedly coming from persons who knew the facts relating to matters which would not be competent evidence on the trial of the case and could not be made competent; and that any prospective juror who may have read such incompetent evidence so soon before the case is tried will be improperly influenced by it. Counsel is referring to the alleged statement of James Larry Ferguson that the defendant shot him "because he knew too much about some bank robberies."

Respectfully submitted.

DALE QUILLEN.

AFFIDAVIT

STATE OF TENNESSEE,
County of Davidson.

I, Dale Quillen, being duly sworn, depose and say, that I am the attorney for William Eugene Beard. That the said William Eugene Beard is now incarcerated in the Smith County jail a distance of approximately 55 miles from my office which makes him quite inaccessible to me to discuss the defense of his case.

That I have a case set for trial in the Criminal Court of Davidson County, Tennessee on Friday, October 27; a case set for trial in the United States District Court for the Middle District of Tennessee on Monday, October 30; a case set for trial in the United States District Court at Greenville, Tennessee on Wednesday, November 1; a case set for trial in the Criminal Court of Davidson County, Tennessee on Thursday, November 2; and appearance for judgment in the United States District Court for the Middle District of Tennessee on Monday, November 6; a capital (murder) case set for trial in the Criminal Court of Davidson County on Tuesday, November 7; a capital (murder) case set for trial in the Criminal Court of Davidson County, Tennessee on November 27, 1967.

I further represent to the Court in good faith that I cannot be prepared to go to trial in the case of United States of America vs. William Eugene Beard as he is presently indicted on November 13, 1967. I further represent to the Court that the indictment in this case is the most far-reaching and cumbersome indictment, both from a standpoint of law and facts that I have ever experienced. The investigation as to law and facts is far from complete and I represent to the Court in good faith that such an investigation is proper in a case of this magnitude and cannot be adequately completed by November 13.

This affidavit is made in support of a motion for a continuance in this case. It is made in good faith and not for the purpose of seeking an unreasonable delay of the trial.

DALE QUILLEN.

Sworn to and subscribed before me on this the 26th day of October, 1967.

JOYCE L. BURKLIN,
Notary Public.

My commission expires: 4/28/68.

[Received for Entry, 3 p.m., Oct. 30, 1967, Brandon Lewis, Clerk, by Edith C. Land, D.C.]

In the District Court of the United States for the Middle District of Tennessee, Nashville Division

OCTOBER 26, 1967

No. 14102—Nash. Crim.

UNITED STATES OF AMERICA

vs.

GARY LEE ETHRIDGE; GEORGIA ETHRIDGE, WILLIAM EUGENE BEARD, JAMES HERMAN BOSTIC, JOHN W. LEEMAN, SAMMY RAY COLE, JAMES RICHARD SELF

Came the United States Attorney and also came Honorable Dale Quillen, attorney for the defendant William Eugene Beard, and the Honorable William C. Wilson, attorney for the defendants Gary Lee Ethridge, Georgia Ethridge and Sammy Ray Cole. The defendant William Eugene Beard having filed a motion to extend time for filing of pre-trial motions, and a motion for a continuance of the case which is set for trial on November 13, 1967; and after hearing arguments of counsel, the Court is of the opinion that the motions are not well taken. It is therefore ORDERED that the motion of the defendant William Eugene Beard to extend time for filing pre-trial motions, and for a continuance of the case, are hereby denied.

It is further Ordered that all pre-trial motions, filed by all defendants, are set for hearing at 9:00 A.M. November 6, 1967.

Enter:

WM. E. MILLER,
United States District Judge.

Approved for entry:
GILBERT MERRITT, Jr.,
United States Attorney.

[Filed Oct. 27, 1967, Brandon Lewis, Clerk, by Edith C. Land, D.C.]

In the United States District Court for the Middle District of Tennessee, Nashville Division

Nashville Criminal No. 14,102, Motion No. 16

UNITED STATES OF AMERICA

vs.

WILLIAM EUGENE BEARD

MOTION

The defendant, William Eugene Beard, moves the Court to transfer the proceeding as to him to another district for the reason that there is pending in the Middle District of Tennessee so great a prejudice against the defendant that he cannot obtain a fair and impartial trial in that district. The defendant suggests that his case be transferred from Nashville to Chattanooga, or to some other place away from the normal daily circulation area of the *Nashville Tennessean*, the *Nashville Banner* and *The Lebanon Democrat* newspapers, and beyond the normal range of the three (3) television stations of Nashville, that is; WSM T.V., WLAC T.V., and WSIX T.V.

The defendant further avers that his case has been given a tremendous amount of publicity by the above named news organs reciting prejudicial matter which would not be admissible in the trial of his case, the result of which would deprive him of a fair trial in the Middle District of Tennessee.

The defendant, therefore, prays that he be granted a hearing on this motion and permitted to call witnesses to testify on his behalf in support of this motion.

Respectfully submitted.

DALE QUILLEN,
Attorney for Defendant.

[Filed Oct. 27, 1967, Brandon Lewis, Clerk, by Guy W. Copper, D.C.]

United States District Court for the Middle District of Tennessee, Nashville Division

Criminal No. 14102

UNITED STATES OF AMERICA

vs.

GARY LEE ETHRIDGE, GEORGIA ETHRIDGE, WILLIAM EUGENE BEARD, JAMES HERMAN BOSTIC, JOHN W. LEEMAN, SAMMY RAY COLE, JAMES RICHARD SELF

MOTION

James Herman Bostic, one of the defendants in the above-entitled cause, moves the court, pursuant to Rule 14 of the Rules of Criminal Procedure, that the trial of the seven defendants in this cause be separated, and the defendant, James Herman Bostic, be permitted to go to trial alone on the offenses charged in the indictment, for the following reasons:

1. The defendant will be prejudiced by the allegations in Count 4 of the indictment against William Eugene Beard charging him with being a fugitive from justice.

Dated 27 Oct. 1967.

THOMAS C. BINKLEY,
Attorney for Defendant.

[Filed Nov. 1, 1967, Brandon Lewis, Clerk, by Edith C. Land, D.C.]

United States District Court for the Middle District of Tennessee, Nashville Division

Nashville Criminal No. 14,102, Motion No. 21

UNITED STATES OF AMERICA

vs.

WILLIAM E. BEARD

MOTION

The defendant, William E. Beard, further moves the Court to dismiss Count 1 of the indictment for reasons as follow:

That said count contains prejudicial allegations about other alleged criminal activity on the part of the defendant which is unrelated to the alleged crime of conspiracy to rob banks. That the alleged overt acts 7 and 8 contain prejudicial matters not relevant to the conspiracy charged in the indictment.

The defendant further contends that the allegation in overt act No. 7 is based upon an unconstitutional act of Congress, that is; Section 5841, Title 26, U.S.C.A. which violates the Fifth Amendment.

Defendant further contends that the allegation of overt act No. 8 is prejudicial to him and to the defendant, James Herman Bostic, and the prejudice to Bostic will be imputed to Beard for the reason that proof of this allegation would tend to show that Bostic was an escapee of a state penal institution where he was being held on a separate state offense for which he had been convicted long before the beginning of the alleged conspiracy, and that proof of Bostic's state confinement would not be relevant to the crime of conspiracy.

The defendant further insists that he will be prejudiced if the trial jury is permitted to know that the grand jury which indicted him did so with the allegations of overt acts 7 and 8 contained therein.

The defendant also moves that the indictment be dismissed for the reason the Court has granted the defendant a severance as to Counts 4 and 5 of the indictment. It is the defendant's position that he will be prejudiced if the trial jury is permitted

to know that he was charged with the violations contained in Counts 4 and 5 of the indictment.

The defendant insists that he cannot adequately be protected from having the jury subjected to improper influence so long as the prejudicial language of overt acts 7 and 8 and Counts 4 and 5 remain in the indictment.

WHEREFORE, defendant prays that said indictment, as drafted, be dismissed as to all counts in which he is charged.

Respectfully submitted.

DALE QUILLEN,
Attorney for Defendant.

[Received for entry, 2:15 p.m., Nov. 14, 1967, Brandon Lewis, Clerk, by Edith C. Land, D.C.]

United States District Court for the Middle District of Tennessee, Nashville Division

Criminal No. 14,102

UNITED STATES OF AMERICA

v.

GARY LEE ETHRIDGE
GEORGIA RAY ETHRIDGE
WILLIAM EUGENE BEARD
JAMES HERMAN BOSTIC
JOHN W. LEEMAN
SAMMY RAY COLE
JAMES RICHARD SELF

ORDER

The Court conducted a hearing on November 7, 1967, upon the pre-trial motions heretofore filed by the parties. Present were Gilbert S. Merritt, Jr., United States Attorney and Alfred H. Knight, III, Assistant United States Attorney representing the United States; and present in person and by their attorneys were the defendants Gary Lee Ethridge, Georgia Ray Ethridge and Sammy Ray Cole represented by William C. Wilson; the defendant James Herman Bostic represented by Thomas Binkley; and the defendant William Eugene Beard represented by Dale Quillen; and the defendant James Richard Self represented by James Bateman.

After hearing evidence and argument of counsel, the Court made the following rules on the motions:

1. The Court granted the motion of the United States Attorney to sever for purposes of trial the case of the defendant John W. Leeman on grounds that this defendant will testify as a witness for the Government.

2. The Court thereupon granted the motion of Quillen to withdraw as counsel for Mr. Leeman.

3. Upon motion of the defendant Beard, the Court appointed Mr. Jack Lowery of the Lebanon Bar as additional counsel for Mr. Beard to serve jointly with Mr. Quillen, heretofore appointed to represent Mr. Beard.

4. Upon Motion No. 1 to dismiss Count One as duplicitous filed by the defendant Beard and joined in by defendants Georgia and Gary Ethridge, Self and Bostic, the Court took this question under advisement and reserved ruling.

5. Upon Motion No. 2 to dismiss Count Five filed by the defendant Beard and joined in by the defendant Bostic, the Court finds that the question raised by this motion is rendered moot by virtue of the action of the Court with respect to Motion No. 5 hereafter discussed.

6. Upon Motion No. 3 to dismiss Count Eight filed by the defendant Beard and joined in by the defendants Gary Ethridge and Cole, the Court found that the motion is not well taken and should be overruled.

7. Upon Motion No. 4 for discovery filed by the defendant Beard and joined in by the defendants Georgia and Gary Ethridge, Bostic, Self and Cole, the Court finds that the Government agrees to furnish to each defendant his statements made to federal law enforcement officers and such statements to state and local law enforcement officers as are in the custody of the Government, and the Court therefore ordered that the Government furnished such information to the defendants by 4:30 on the afternoon of November 7, 1967, if possible.

8. Upon Motion No. 5 for severance of Counts Four and Five filed by the defendant Beard and joined in by the defendant Bostic, the Court finds that the Government agrees to a severance of Counts Four and Five of the indictment and this motion was therefore granted.

9. Upon Motion No. 6 for severance of defendants filed by the defendant Beard and joined in by defendants Georgia and

Gary Ethridge, Bostic, Self and Cole, the Court took this question under advisement and reserved ruling.

10. Upon Motion No. 7 for discovery filed by defendant Beard and joined in by defendants Georgia and Gary Ethridge, Bostic, Self and Cole, the Government agrees to furnish each of the defendants a list of the names and addresses of all witnesses known to the United States Attorney to be called to testify on behalf of the Government, such list of witnesses to be furnished by 4:30 p.m. on November 7, 1967; and to furnish a copy of all statements made by James Larry Ferguson to federal law enforcement agents insofar as such statements are relevant to any offense with which the defendants are charged, such statements to be made available to the defendants as soon as possible but not later than 9:00 a.m., November 9, 1967; and to furnish to the defendants any information in possession of the United States Attorney which indicates that James Larry Ferguson used narcotics; and to furnish to the defendants any autopsy reports of James Larry Ferguson and any scientific tests on the Hudson automobile of James Larry Ferguson; and to make available for observation by defense counsel any evidence taken from such automobile, including a shirt allegedly found in the automobile.

11. Upon Motion No. 8 for further discovery filed by the defendant Beard and joined in by defendants Georgia and Gary Ethridge, Cole and Self, the Court found that the motion was not well taken and it was overruled.

12. Upon Motion No. 9 for inspection of grand jury minutes filed by the defendant Beard, the Court found that this motion was not well taken and it was therefore overruled.

13. Upon Motion No. 10 for autopsy of James Larry Ferguson filed by the defendant Beard, the Court has previously granted this motion and it was unnecessary for the Court to take further action at the hearing.

14. Upon Motions No. 11, 12 and 13 to suppress testimony filed by the defendant Beard, Motion No. 11 being joined in by defendants Georgia and Gary Ethridge, Self, Cole and Bostic, Motion No. 12 being joined in by defendant Self, and Motion No. 13 being joined in by defendants Georgia and Gary Ethridge and Cole, the Court overrules these motions at the present time, granting leave to the defendants to renew the motions at the trial; and upon the statement of the United States Attorney that the Government at this time does not intend to

introduce in evidence at the trial the pistol taken from the defendant Gary Ethridge on or about September 24, 1967, the Court rules that this item of evidence should not be introduced in evidence.

15. Upon Motion No. 14 for continuance filed only by the defendant Beard and resisted by the Government and the defendants Georgia and Gary Ethridge and Cole, the Court finds that this motion is not well taken and should be overruled.

16. Upon Motion No. 15 for additional time for filing pretrial motions filed by the defendant Beard, the Court finds that the motion is not well taken and should be overruled.

17. Upon Motion No. 16 for change of venue filed by the defendant Beard and joined in by defendants Georgia and Gary Ethridge, Cole and Bostic, but not joined in by the defendant Self, the Court reserved ruling upon this motion until a voir dire of the jury is conducted to determine if a fair and impartial jury can be obtained in this district.

18. Upon Motion No. 17 to be allowed to subpoena witnesses at Government expense filed by the defendant Beard and joined in by the defendants Georgia and Gary Ethridge, Cole and Bostic, the Court finds that the motion is not in proper form and should be overruled.

19. Upon Motion No. 18, the United States Attorney stated that the Government has no evidence or leads or other information on this case obtained by means of wire tapping, electronic eavesdropping, or other methods of trespass or infringement upon the constitutional or statutory rights of any of the defendants.

20. Upon Motion No. 19 for Bill of Particulars filed by the defendant Beard and joined in by defendants Georgia and Gary Ethridge, Cole, Bostic and Self, the Court took the question under advisement and reserved ruling.

21. Upon Motion No. 20 to dismiss the indictment filed by defendant Beard and joined in by the defendants Georgia and Gary Ethridge, Cole and Self, the Court found that the motion is not well taken and should be overruled, but ruled further that the Court's action upon this motion does not affect and is not a ruling upon the defendants' motion heard in chambers on November 6, 1967.

22. Upon Motion No. 21 to dismiss Count One filed by defendant Beard and joined in by defendants Georgia and Gary Ethridge, Cole, Bostic and Self, the Court took this question under advisement and reserved ruling.

23. Pursuant to Title 18, United States Code, Section 3432, the Court directed the Clerk to furnish each defendant with the name and place of abode of each venireman to be called for jury service in this case, said list to be furnished by 4:30 p.m., November 7, 1967.

24. The Court granted the Government's motion for discovery under Rule 16(c), Federal Rules of Criminal Procedure and ordered the defendants to permit the Government to inspect any scientific reports or papers, documents and tangible objects which the defendants intend to use in the trial, such information to be furnished by the defendants as soon as they or any one of them determines that such evidence will be introduced at the trial.

25. Upon the oral motion of the defendant Beard made in open Court to require the Government to furnish any background information it may have concerning veniremen to be called for jury service in this case, the Court found that this motion is not well taken and should be overruled.

WM. E. MILLER,
United States District Judge.

Approved for entry:

GILBERT S. MERRITT, JR.,
United States Attorney.

[Received for Entry, 3:40 P.M., Nov. 17, 1967, Brandon Lewis, Clerk, by Edith C. Lano, D.C.]

In the District Court of the United States for the Middle District of Tennessee, Nashville Division

NOVEMBER 13, 1967

No. 14102—Nash. Crim.

UNITED STATES OF AMERICA

vs.

GARY LEE ETHRIDGE, GEORGIA ETHRIDGE, WILLIAM EUGENE BEARD, JAMES HERMAN BOSTIC, SAMMY RAY COLE, JAMES RICHARD SELF

Came the United States Attorney and also came the defendants Gary Lee Ethridge, Georgia Ethridge and Sammy

Ray Cole, in person and by their attorney William C. Wilson; also came the defendant William Eugene Beard in person and by his attorneys Dale Quillen and Jack Lowery; also came the defendant James Herman Bostic in person and by his attorney Thomas C. Binkley; also came the defendant James Richard Self in person and by his attorney James H. Bateman; each of the said defendants having heretofore entered pleas of not guilty to the counts in the indictment in which they are charged, the defendant Gary Lee Ethridge being charged in counts one, two, three, seven and eight; the defendant Georgia Ethridge being charged in counts one, two and three; the defendant William Eugene Beard being charged in counts one, six, seven and eight; the defendant James Herman Bostic being charged in counts one, two and three; the defendant Sammy Ray Cole being charged in counts one, two and three; and the defendant James Richard Self being charged in counts one, six, and seven.

Thereupon began the selection of the jury to try the case.

The selection of the jury not being completed, and the hour for adjournment having arrived, all prospective jurors were instructed to return at 9:00 A.M. November 14, 1967. Thereupon, the Court was adjourned until 9:00 A.M. November 14, 1967.

Enter:

WM. E. MILLER,
United States District Judge.

Approved for entry:

GILBERT S. MERRITT, Jr.,
United States Attorney.

[Received for entry 7:40 a.m., November 28, 1967, Brandon Lewis, Clerk, by Edith C, Lano, D.C.]

In the District Court of the United States for the Middle District of Tennessee, Nashville Division

November 20, 1967

No. 14102—Nash. Crim.

UNITED STATES OF AMERICA

vs.

GARY LEE ETHRIDGE, GEORGIA ETHRIDGE, WILLIAM EUGENE BEARD, JAMES HERMAN BOSTIC, SAMMY RAY COLE, JAMES RICHARD SELF

Came the United States Attorney and also came the defendants Gary Lee Ethridge, Georgia Ethridge and Sammy Ray Cole in person and by their attorney William C. Wilson; also came the defendant William Eugene Beard in person and by his attorneys Dale Quillen and Jack Lowery; also came the defendant James Herman Bostic in person and by his attorney Thomas C. Binkley; also came the defendant James Richard Self in person and by his attorney James H. Bateman.

Thereupon came a jury of twelve good and lawful men and women, to-wit: Mrs. Versa Hodges, Crosby Moore, Robert H. Hamilton, Mrs. J. B. Singleton, Mrs. Katherine Barnhill, Mrs. J. J. Frey, Baxter Luton, Carl W. Eby, J. Marvin Hayes, P. S. Hennessey, Harold Gaines, and Joe A. Boone, and alternate jurors, Mrs. H. B. Crouch, Herman Burton, Jr., Frank Reed, and Willard A. Akins, who were duly elected, impaneled and sworn well and truly to try the issues joined wherein the United States of America is the plaintiff and the said Gary Lee Ethridge, Georgia Ethridge, William Eugene Beard, James Herman Bostic, Sammy Ray Cole and James Richard Self, are the defendants in the case, and a true verdict render according to the law and the evidence.

After hearing part of the proof in the case and the hour for adjournment having arrived, the jury was respited until 9:00 A.M., November 21, 1967.

Enter:

WM. E MILLER,
United States District Judge.

Approved for entry:
GILBERT S. MERRITT, Jr.,
United States Attorney.

[Received for entry 4:00 p.m., Dec. 5, 1967, Brandon Lewis, Clerk, by Guy W. Cooper, D.C.]

In the District Court of the United States for the Middle District of Tennessee, Nashville Division

December 4, 1967

No. 14102—Nash. Crim.

UNITED STATES OF AMERICA

vs.

GARY LEE ETHRIDGE, GEORGIA ETHRIDGE, WILLIAM EUGENE BEARD, JAMES HERMAN BOSTIC, SAMMY RAY COLE, JAMES RICHARD SELF

Came the United States Attorney and also came the defendants Gary Lee Ethridge, Georgia Ethridge and Sammy Ray Cole in person and by their attorney William C. Wilson; also came the defendant William Eugene Beard in person and by his attorneys Dale Quillen and Jack Lowery; also came the defendant James Herman Bostic in person and by his attorney Thomas C. Binkley; also came the defendant James Richard Self in person and by his attorney James H. Bateman; also came again the jury who on December 1, 1967 were respited until today, and the taking of the proof in the case was resumed.

At the conclusion of the Government's proof each of the defendants moved the Court for a judgment of acquittal, and after arguments of counsel, the Court denied said motions.

After hearing part of the proof in the case and the hour for adjournment having arrived, the jury was respited until 9:00 A.M., December 5, 1967.

Enter:

WM. E. MILLER,
United States District Judge.

Approved for entry:
GILBERT S. MERRITT, Jr.,
United States Attorney.

DECEMBER 4, 1967.

[Received for entry, 3 P.M., Dec. 18, 1967, Brandon Lewis, Clerk, by Guy W. Cooper, D.C.]

In the District Court of the United States for the Middle District of Tennessee, Nashville Division

DECEMBER 15, 1967

No. 14102—Nash. Crim.

UNITED STATES OF AMERICA

vs.

GARY LEE ETHRIDGE, GEORGIA ETHRIDGE, WILLIAM EUGENE BEARD, JAMES HERMAN BOSTIC, SAMMY RAY COLE, JAMES RICHARD SELF

Came the United States Attorney and also came the defendants Gary Lee Ethridge, Georgia Ethridge and Sammy Ray Cole in person and by their attorney William C. Wilson; also came the defendant William Eugene Beard in person and by his attorneys Dale Quillen and Jack Lowery; also came the defendant James Herman Bostic in person and by his attorney Thomas C. Binkley; also came the defendant James Richard Self in person and by his attorney James H. Bateman; also came again the jury who on December 14, 1967 were respited until today.

After having heard all the proof in the case, the arguments of counsel, and the charge of the Court, the jury retired to consider of their verdict.

The hour for adjournment having arrived and the jury not having agreed upon a verdict, the jury was respited until 9:00 A.M., December 16, 1967.

Enter:

WM. E. MILLER,
United States District Judge.

Approved for entry:
GILBERT S. MERRITT, JR.,
United States Attorney.

[Received for Entry, 3 P.M., Dec. 18, 1967, Brandon Lewis, Clerk, by Guy W. Cooper, D.C.]

In the District Court of the United States for the Middle District of Tennessee, Nashville Division

DECEMBER 16, 1967

No. 14102—Nash. Crim.

UNITED STATES OF AMERICA

vs.

GARY LEE ETHRIDGE, GEORGIA ETHRIDGE, WILLIAM EUGENE BEARD, JAMES HERMAN BOSTIC, SAMMY RAY COLE, JAMES RICHARD SELF

Came the United States Attorney and also came the defendants GARY LEE ETHRIDGE, GEORGIA ETHRIDGE and SAMMY RAY COLE in person and by their attorney William C. Wilson; also came the defendant WILLIAM EUGENE BEARD in person and by his attorney Dale Quillen; also came the defendant JAMES HERMAN BOSTIC in person and by his attorney Thomas Binkley; also came the defendant JAMES RICHARD SELF in person and by his attorney James H. Bateman; also came again the jury who on yesterday were respited until today, and retired to further consider of their verdict.

The jury having retired to consider of their verdict, returned into open court and reported that they found the defendant GARY LEE ETHRIDGE guilty under each the first, second, third and eighth counts, and not guilty under the seventh count; and that they found the defendant GEORGIA ETH-

RIDGE guilty under the first count, and not guilty under the second and third counts; and that they found the defendant WILLIAM EUGENE BEARD guilty under each the first, seventh and eighth counts, and not guilty under the sixth count; and that they found the defendant JAMES HERMAN BOSTIC guilty under each the first, second and third counts; and that they found the defendant SAMMY RAY COLE guilty under each the first, second and third counts; and that they found the defendant JAMES RICHARD SELF guilty under the first count, and not guilty under each the sixth and seventh counts.

It is therefore ORDERED that upon the jury verdict of not guilty, as to the defendant GARY LEE ETHRIDGE under the seventh count, that he be discharged under said count; and that upon the jury verdict of not guilty, as to the defendant GEORGIA ETHRIDGE under each the second and third counts, that she be discharged under said counts; and that upon the jury verdict of not guilty, as to the defendant WILLIAM EUGENE BEARD under the sixth count, that he be discharged under said count; and that upon the jury verdict of not guilty, as to the defendant JAMES RICHARD SELF under each the sixth and seventh counts, that he be discharged under said counts.

For good and sufficient reasons to the Court appearing, judgment is reserved as to each of the defendants under the counts of which the jury found them guilty, until 9:00 A.M., December 21, 1967.

It is further ORDERED that the defendant GEORGIA ETHRIDGE remain on her present bond until said date of December 21, 1967.

It is further ORDERED that each of the defendants is allowed an additional time within which to file motions for new trial, or until January 8, 1968.

Enter;

WM. E. MILLER,
United States District Judge.

Approved for entry:
GILBERT MERRITT, Jr.,
United States Attorney.

[Received for entry 12:45 noon, Dec. 20, 1967, Brandon Lewis, Clerk, by Edith C. Land, D.C.]

United States District Court for the Middle District of Tennessee, Nashville Division

Criminal No. 14,102

UNITED STATES OF AMERICA

v.

GARY LEE ETHRIDGE, GEORGIA RAY ETHRIDGE, WILLIAM EUGENE BEARD, JAMES HERMAN BOSTIC, JOHN W. LEEMAN, SAMMY RAY COLE, JAMES RICHARD SELF

ORDER

The Court conducted a further hearing on November 13, 1967, upon the pre-trial motions heretofore filed by the parties. Present were Gilbert S. Merritt, Jr., United States Attorney and Alfred H. Knight, III, Assistant United States Attorney representing the United States; and present in person and by their attorneys were the defendants Gary Lee Ethridge, Georgia Ray Ethridge and Sammy Ray Cole represented by William C. Wilson; the defendant James Herman Bostic represented by Thomas Binkley; and the defendant William Eugene Beard represented by Dale Quillen; and the defendant James Richard Self represented by James Bateman.

After hearing arguments of counsel, the Court made the following rulings on the motions:

1. The Court overruled the oral motion of the defendant William Eugene Beard for a continuance of the trial of the case.

2. Upon Motion No. 1 to dismiss Count One as duplicitous filed by the defendant Beard and joined in by defendants Georgia and Gary Ethridge, Self and Bostic, the Court found that the motion is not well taken and should be overruled.

3. Upon Motion No. 6 for severance of defendants filed by the defendant Beard and joined in by defendants Georgia and Gary Ethridge, Bostic, Self and Cole, the Court found that the motion is not well taken and should be overruled.

4. Upon Motion No. 19 for Bill of Particulars filed by the defendant Beard and joined in by defendants Georgia and Gary

Ethridge, Cole, Bostic and Self, the Court found that the motion is not well taken and should be overruled.

5. Upon Motion No. 21 to dismiss Count One filed by defendant Beard and joined in by defendants Georgia and Gary Ethridge Cole, Bostic and Self, the Court found that the motion is not well taken and should be overruled.

6. Upon the motion filed by the defendant Beard and joined in by the other defendants, to dismiss the indictment, or in the alternative, to suppress the testimony of John W. Layman, and testimony obtained through leads furnished by John W. Layman, or, in the further alternative, to grant Beard a severance and separate trial, the Court found that the motion is not well taken and should be overruled.

Enter:

WM. E. MILLER,
United States District Judge.

Approved for entry:

GILBERT S. MERRITT, JR.,
Assistant U.S. Attorney.

ALFRED H. KNIGHT, III
Assistant U.S. Attorney.

[Received for entry, 3:30 P.M., Dec. 21, 1967, Brandon Lewis, Clerk by Guy W. Cooper, D.C.]

United States District Court for the Middle District of Tennessee

No. 14102 Nash. Crim.

UNITED STATES OF AMERICA

v.

JAMES HERMAN BOSTIC

On this 21st day of December 1967 came the attorney for the government and the defendant appeared in person and [1] by his attorney Thomas C. Binkley, who was appointed by the Court to represent him.

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[1] Insert "by [name of counsel], counsel" or "without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

IT IS ADJUDGED that the defendant upon his plea of [1] not guilty and a finding of guilty by the jury under each the 1st, 2nd and 3rd counts, has been convicted of the offense of violating Sections 371; 2113(a) and 2; and 2113(c) and 2, Title 18, United States Code, as charged [2] in counts 1, 2 and 3. And the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of five (5) years under the first count, twenty (20) years under the second count, and ten (10) years under the third count, sentences under the second and third counts to run concurrently with each other, but consecutively to the sentence under the first count. Sentence imposed herein to run consecutively to the sentence the defendant is now serving in the Tennessee State Penitentiary.

IT IS ADJUDGED that [3]

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

WM. E. MILLER,
United States District Judge.

Approved for Entry:
GILBERT MERRITT, JR.
United States Attorney.

The Court recommends commitment to: [4]

BRANDON LEWIS,
Clerk.

---

[1] Insert (1) "guilty" and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

[2] Insert "in count(s) number ——" if required.

[3] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law.

[4] Enter any order with respect to suspension and probation.

[5] For use of Court wishing to recommend a particular institution.

RETURN

I have executed the within Judgment and Commitment as follows:

Defendant delivered on to

Defendant noted appeal on

Defendant released on

Defendant elected, on not to commence service of the sentence.

Defendant's appeal determined on

Defendant delivered on to at the institution designated by the Attorney General with a certified copy of the within Judgment and Commitment.

....., *United States Marshal.*

[Filed, Dec. 21, 1967. Brandon Lewis, Clerk, Guy W. Cooper, D.C.]

In the United States District Court for the Middle District of Tennessee, Nashville Division

Criminal No. 14,102

UNITED STATES OF AMERICA

vs.

JAMES HERMAN BOSTIC

MOTION FOR LEAVE TO APPEAL IN FORMA PAUPURIS

The defendant James Herman Bostic respectfully moves the Court that he be granted leave to appeal from the judgment of the United States District Court in forma paupuris, and that he be furnished a complete transcript in this cause at the Government's expense for the reason that he is without money or property with which to prepay the cost of appealing from the judgment of conviction or to purchase the transcript of the trial proceedings.

An affidavit of the defendant is attached hereto.

THOMAS C. BINKLEY,
Attorney for Defendant.

AFFIDAVIT

State of Tennessee, County of Davidson

JAMES HERMAN BOSTIC, being duly sworn, deposes and says, that he is the defendant in the case of United States of America vs James Herman Bostic, et al, Criminal No. 14,102.

He further says that he is without money or property with which to prepay the cost of appealing from the judgment of conviction and that he does not have money or property with which to pay for a complete transcript of all proceedings against him.

The defendant further represents to the Court that he believes that he will prevail upon appeal of this cause and that a copy of the transcript of the proceedings is absolutely essential in preparing his brief on appeal.

This affidavit is made in support of a motion that he be allowed to appeal in forma pauperis and is made in good faith for the reasons stated herein.

(S) JAMES HERMAN BOSTIC.
James Herman Bostic

Witness my hand and seal this 21st day of Dec., 1967.
THOMAS C. BINKLEY.

[Filed, Dec. 21, 1967, Brandon Lewis, Clerk, by Guy W. Cooper, D.C.]

In the United States District Court for the Middle District of Tennessee, Nashville Division

Criminal No. 14,102

UNITED STATES OF AMERICA

vs.

JAMES HERMAN BOSTIC

NOTICE OF APPEAL

The name and address of the appellant is James Herman Bostic, Metropolitan Jail, Nashville, Tennessee.

The name and address of appellant's attorney is Thomas C. Binkley, Court Square Building, 300 James Robertson Parkway, Nashville, Tennessee.

OFFENSE

The offenses for which the defendant has been confined are as follows:

(1) Conspiracy to violate Title 18, United States Code, Section 371, 2113 (a) and 2; and

(2) violation of Title 18, United States Code, Section 2113 (c) and 2.

JUDGMENT APPEALED FROM

The defendant is appealing from a judgment of the United States District Court and the sentence imposed on the 21st day of December, 1967, wherein he was sentenced as follows:

Count 1, five years; Count 2, twenty years; and Count 3, ten years.

The defendant is now in custody in the Tennessee State Penitentiary at Nashville, Tennessee.

I, the above named appellant, hereby appeal to the United States Court of Appeals for the Sixth Circuit from the above stated judgment.

(S) JAMES HERMAN BOSTIC.
James Herman Bostic

THOMAS C. BINKLEY,
Attorney for Defendant.

[Received for entry 11:30 a.m., Dec. 22, 1967, Brandon Lewis, Clerk, by Guy W. Cooper, D.C.]

In the District Court of the United States for the Middle District of Tennessee, Nashville Division

No. 14102—Nash. Crim.

UNITED STATES OF AMERICA

vs.

GARY LEE ETHRIDGE, GEORGIA ETHRIDGE, WILLIAM EUGENE BEARD, JAMES HERMAN BOSTIC, SAMMY RAY COLE, JAMES RICHARD SELF

In this case the Court has reserved ruling on each of the defendant's motions for judgment of acquittal made at the

conclusion of all the proof in the case, and the Court desires to hear further arguments on the motions;

It is therefore ORDERED that this case be set for hearing of arguments on the defendants' motions for judgment of acquittal, said hearing to be at 9:00 A.M., Thursday, January 11, 1968, in U.S. District Courtroom No. 1, U.S. Court House, Nashville, Tennessee, with all defendants being present with their attorneys.

Enter:

WM. C. MILLER,
United States District Judge.

DECEMBER 22, 1967.

[Received for entry, 1 P.M., Jan. 12, 1968, Brandon Lewis, Clerk, by Guy W. Cooper, D.C.]

In the District Court of the United States for the Middle District of Tennessee, Nashville Division

No. 14102—Nash. Crim.

UNITED STATES OF AMERICA

vs.

GARY LEE ETHRIDGE, GEORGIA ETHRIDGE, WILLIAM EUGENE BEARD, JAMES HERMAN BOSTIC, SAMMY RAY COLE, JAMES RICHARD SELF

ORDER

At the conclusion of the government's proof and at the conclusion of all of the evidence in this case, the respective defendants, through their attorneys, moved the Court for judgment of acquittal. The Court reserved ruling as to said motions and continued such reservation upon return of the jury's verdicts and at the time sentences were imposed. Upon consideration the Court is of the opinion that a further hearing as to said motions is not required and that a ruling should be made at this time.

It is, therefore, upon full consideration, hereby ORDERED that the motions for judgment of acquittal made at the con-

clusion of the government's case and at the conclusion of all of the evidence in the case on behalf of the defendants Gary Lee Ethridge, Georgia Ethridge, William Eugene Beard, James Herman Bostic, Sammy Ray Cole, and James Richard Self, be, and the same are hereby overruled.

Enter:

WM. E. MILLER,
United States District Judge.

General Docket

United States Court of Appeals

for the

Sixth Circuit

Case No. 18912

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

JAMES HERMAN BOSTIC, DEFENDANT-APPELLANT, (BANK ROBBERY)

Appeal from Middle District of Tennessee at Nashville

No. below: 14102 Criminal.
Judge below: Miller.
Date of judgment: December 21, 1967.
Notice of appeal filed: December 21, 1967.

Thomas C. Binkley, Court Square Building, 300 James Robertson Parkway, Nashville, Tennessee 37201, (Court appointed)—CJA, *James Herman Bostic,* 27421–13, Box 1000, Leavenworth, Kansas 66048, attorneys for appellant.

Charles H. Anderson, U.S. attorney, U.S. Courthouse, 8th and Broad, Nashville, Tennessee 37203. *Alfred H. Knight, III,* Assistant U.S. attorney, Nashville, Tennessee 37203, attorneys for appellee.

Account of appellant: In forma pauperis.
Remarks: 1 box of exhibits.

General Docket

United States Court of Appeals
for the Sixth Circuit

Case No. 18,912

Date	Filings—Proceedings	Filed
1967		
Dec. 28	Copy of notice of appeal and Clerk's statement of docket entries	
1968		
Aug. 13	*Certified record* (1 vol. pleadings and 24 vols. transcript), filed; and cause docketed	
Aug. 26	Appearance of counsel for Appellant	
Aug. 26	Appearance of counsel for Appellee	
Sep. 24	Stipulation: Brief for Appellant to 12/21/68 (Approved, but no further extension will be allowed-JWP)	
Nov. 21	Order appointing counsel or Appellant (Peck, J.)	Q-471
Dec. 16	Stipulation: Appellant's brief to 1/18/69 (Approved)	
1969		
Jan. 17	Stipulation: Appellant's brief to 2/18/69 (Approved, but no further extensions will be allowed-JWP)	
Feb. 18	Four copies of Appellant's Brief, with proof of service	
Feb. 18	Motion of Appellant to dispense with the requirement of an appendix to his brief, with proof of service (Granted-JWP)	
Mar. 14	Motion: Appellee's brief to 4/30/69 (Granted-JWP)	
May 23	Twenty-five copies of Brief for Appellee	
Feb. 23	Proof of service of brief for Appellee	
Dec. 15	Three copies transcript for use of Court in lieu of an appendix (24 vols.) (Distributed to the Court)	
Dec. 15	Cause argued and submitted (Before: Edwards, McCree and Combs, JJ.)	R-385
1970		
Apr. 20	Judgment of the District Court affirmed	R-637
Apr. 20	Opinion by Edwards, J.	

Causes Argued and Submitted

Dec. 15, 1969

Before: EDWARDS, McCREE and COMBS, Circuit Judges

These causes are argued by Glenn Zell for Gary Lee Ethridge and Georgia Ethridge; by Dale Quillen for William Eugene Beard; by Thomas C. Binkley for James Herman Bostic; by William C. Wilson for Sammy Ray Cole and by Alfred H. Knight, III for Plaintiff-appellee and are submitted to the Court.

[Filed Apr. 20, 1970, Carl W. Reuss, Clerk.]

United States Court of Appeals for the Sixth Circuit

No. 18912

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

JAMES HERMAN BOSTIC, DEFENDANT-APPELLANT

Before: EDWARDS, McCREE and COMBS, Circuit Judges.

JUDGMENT

Appeal from the United States District Court for the Middle District of Tennessee.

This cause came on to be heard on the record from the United States District Court for the Middle District of Tennessee and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

No costs awarded. Rule 39(b).

Entered by order of the Court.

CARL W. REUSS,
Clerk.

Nos. 18909–913

United States Court of Appeals

for the Sixth Circuit

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

GARY LEE ETHERIDGE, GEORGIA ETHERIDGE, WILLIAM EUGENE BEARD, JAMES HERMAN BOSTIC, SAMMY RAY COLE, DEFENDANTS-APPELLANTS

Appeal from the United States District Court for the Middle District of Tennessee, Nashville Division.

Decided April 20, 1970

Before: EDWARDS, McCREE and COMBS, Circuit Judges.

EDWARDS, Circuit Judge. Five alleged coconspirators in a bank robbery and murder case appeal from their convictions for violations of 18 U.S.C. § 2113 (1964) (the federal bank robbery act) after a lengthy jury trial in the United States District Court for the Middle District of Tennessee, Nashville Division.

The indictment contained one conspiracy count and seven other counts charging substantive offenses, all of which were alleged in Count 1 as overt acts of the conspiracy.

Count 1 alleged a conspiracy to rob federally insured banks with dangerous weapons and to commit murder to avoid apprehension for same. Gary Lee Etheridge, Georgia Etheridge, William Eugene Beard, James Herman Bostic, John W. Leeman, Sammy Ray Cole, James Richard Self, and James Larry Ferguson were charged on this count.

Count 2 alleged robbery of the Bordeaux branch of the Commerce Union Bank on April 24, 1967. Bostic, Gary Lee Etheridge, Georgia Etheridge, Leeman and Cole were charged on this count.

Count 3 alleged possession of money from the above robbery. Bostic, Gary Lee Etheridge, Georgia Etheridge, Leeman and Cole were charged on this count.

Count 4 alleged the concealment of Bostic, a federal fugitive. Beard was charged on this count.

Count 5 alleged possession of an unregistered sawed-off shotgun. Beard was charged on this count.

Count 6 alleged robbery of the Third National Bank on August 3, 1967. Beard and Self were charged on this count.

Count 7 alleged possession of money from the above robbery. Beard, Self and Gary Lee Etheridge were charged on this count.

Count 8 alleged the murder of Ferguson and charged Gary Lee Etheridge and Beard with committing it.

While the indictment just detailed charged seven persons as codefendants, one of them, Leeman, turned state's evidence and on the government's motion, his trial was severed. The government also moved to sever, and subsequent to trial, to dismiss Counts 4 and 5.

The jury returned verdicts of guilty as to six codefendants.

Gary Lee Etheridge was found guilty on Counts 1, 2, 3 and 8, and received sentences of 5, 20, 10 and 50 years respectively, to run concurrently. He was found not guilty on Count 7.

Georgia Etheridge was found guilty on Count 1 and received a 4 year sentence. She was found not guilty on Counts 2 and 3.

William Eugene Beard was found guilty on Counts 1, 7 and 8, and was sentenced to terms of 5, 10 and 50 years, respectively, to run concurrently. He was found not guilty on Count 6.

James Herman Bostic was found guilty on Counts 1, 2 and 3, and was sentenced to terms of 5, 20 and 10 years, the sentences under Counts 2 and 3 to run concurrently, but consecutive to the sentence under Count 1.

Sammy Ray Cole was found guilty on Counts 1, 2 and 3, and was sentenced to terms of 5, 15 and 10 years, to run concurrently.

James Richard Self was found guilty on Count 1 and was sentenced to a term of 1 year. He was found not guilty on Counts 6 and 7.

Defendant Self filed notice of appeal from his conviction on Count 1, bu prior to oral argument of this appeal, a motion for dismissal of his appeal was filed jointly by him and the United States Attorney and was granted.

In summary, all five of the appellants were found guilty on the conspiracy count; Gary Lee Etheridge, Bostic and Cole were found guilty on Counts 2 and 3, involving the Bordeaux Bank robbery; Bear was found guilty on Count 7, alleging

possession of money stolen in the Third National Bank robbery, and Gary Lee Etheridge and Beard were found guilty of the murder of Ferguson, as alleged in Count 8.

Of course, on review of jury verdicts of guilty, we are required to review the evidence from the point of view most favorable to the government. *Glasser v. United States*, 315 U.S. 60, 80 (1942).

The government's theory in relation to this case, which it supported at trial by a mass of direct, circumstantial and hearsay evidence, was that the defendants formed a conspiracy in the spring of 1967 to engage in various bank robberies and burglaries; that pursuant to this conspiracy, two banks were successfully robbed (the Bordeaux branch of the Commerce Union Bank and the Third National Bank); another bank (the Bank of Orlinda) was broken into in an unsuccessful attempt at burglary; various other crimes such as car theft were committed in the course of the conspiracy; and that the Ferguson murder was committed by two of the coconspirators in order "to avoid apprehension" for the bank robberies because Ferguson had been "talking to the FBI."

Some of the testimony in this lengthy record which the jury could have relied on in reaching its verdicts follows.

John Leeman, the alleged coconspirator turned state's witness, testified pertaining to the robbery of the Bordeaux branch of the Commerce Union Bank:

"Q Did you talk about, with Gary Etheridge, the part that he expected to play in any bank robberies?

"A Yes, sir.

"Q What did he say?

"A He and I decided that going around and sticking them up wasn't no place for us.

"Q And so what was your—what was his thought about how that would be done?

"A We figures we could find somebody to do it for us.

"Q All right, sir. Now what was the first bank that your attention got focused on as a possibility for robbery?

"A Bordeaux.

* * *

"A So Ferguson, he was out on his own there, so Gary and I talked about the propositioning him about robbing the bank, and we did, and he accepted.

* * *

"Q Now was the idea for him to go in by himself or somebody else with him?

* * *

"A We just asked him could he get somebody else, and he said he could.

"Q All right. And who did he get?

"A Bostic.

* * *

"Q All right. Now I want to get into—with you, Mr. Leeman, about the plans for robbing that bank that were discussed there at Etheridge's house that day, Friday.

"First, let me ask you about the cars. Let me direct your attention to the cars to be used and ask you what cars were to be used in the robbery?

"A It was a white Cadillac and a GTO Pontiac.

Q. "White Cadillac and GTO Pontiac to be used?

"A Yes, sir.

"Q Where did these cars come from?

"A Somebody stole them.

* * *

"Q Where were the cars which had been stolen, where were they kept?

"A One of them was at Parkview Hospital.

"Q Which one was that, do you know?

"A The white Cadillac.

"Q The white Cadillac was at the Parkview, all right.

"A The GTO Pontiac was at the old County Hospital in Bordeaux.

* * *

"Q All right. Now about these cars, was it a part of the plan to get Ferguson and Bostic over to the cars on Monday morning before the bank was robbed?

"A. Yes, sir.

"Q Who was supposed to take them over there?

"A Gary and I took Bostic and Ferguson to the GTO.

"Q All right, sir. Over to the GTO at the County hospital?

"A Yeah.

"Q Now on Friday when you were planning the bank robbery, what was the plan for the bank robbery, to go up to the bank and then how were they supposed to get out of there?

* * *

"Q Where were they supposed to go first, Bostic and Ferguson, after they robbed the bank?

"A Over to the TB Hospital.

* * *

"Q Now what were they supposed to do? Why were they supposed to go to the TB Hospital?

"A To shift automobiles.

"Q To switch automobiles from the Pontiac automobile to the Cadillac automobile?

"A That's right.

"Q And the Cadillac automobile was stored at the TB Hospital, I believe it was left at the TB Hospital for the purposes of switching cars?

"A It had been moved from Parkview to the TB Hospital.

* * *

"Q All right, and did Sammy Ray Cole have any role in this bank robbery, was the plan——

"A He was waiting in the Cadillac up at the TB Hospital.

"Q He was waiting in the Cadillac after the robbery?

"A Yes.

"Q What was he supposed to do?

"A He and Bostic were going to get out down there and jump in the woods.

"Q All right, he and Bostic—in other words, they were supposed to come over to the TB Hospital, switch the Pontiac automobile for the Cadillac automobile?

"A Right.

* * *

"Q Now who was supposed to be in the Cadillac automobile after the switch was made? Who was supposed to be inside that car?

"A Sammy, Bostic and Ferguson.

"Q Sammy?

"A Sammy Cole.

"Q Sammy, Bostic and Ferguson?

"A Yeah.

"Q And who was supposed to be driving it?

"A Sammy drove it, I think. I don't know who drove it, I wasn't up there.

"Q All right, and what were they supposed to do next after they got in that car and started driving, what were they supposed to do next?

"A Coming out of the TB Hospital and took a left, and first street back, they went right, and Cole and Bostic got out and went in the woods and Ferguson went on.

* * *

"Q All right. Then where was Ferguson supposed to go? Was he supposed to keep on going?

"A He went on over to Moormans Arm Road, and on the left there there's a Negro subdivision, and he parked the Cadillac over there. On the other side of the road was a beer joint, and he went—got out of the Cadillac and went over to the beer joint.

* * *

"Q Was any plan about who was supposed to go over and get Ferguson?

"A We planned for Georgia [Etheridge] to go get him.

"Q And what about Bostic and Cole, who were supposed to be up in the woods, what was the plan on that?

"A She was going to pick them up at dark.

"Q All right, sir. Now in the planning of it, were Bostic and Ferguson, when they went in the bank, what were they supposed to be wearing, if anything?

"A Masks, stocking masks.

* * *

"Q Now as part of the plan, was there any agreement on the split of the money?

"A Yeah, we was going to split the money four ways, at first, and then we decided to split it five ways.

"Q The original plan was to split the money four ways, and then it was decided to split it five ways?

"A Yes, sir.

"Q According to the original plan, who was the money supposed to be split among?

"A Bostic, Ferguson, Gary and myself.

"Q And then when it got to be five ways, who was that supposed to be?

"A Cole.

* * *

"Q Did you know when you went back to Gary's whether or not the bank had been robbed?

"A I knew it had been robbed.

"Q How did you know it?

"A There was a lot of police running around out there.

"Q A lot of police cars came up?

"A Yes, sir.

"Q So then you went back over to Etheridge's house?

"A Yes, sir.

"Q So then—who was there when you got back, do you know?

"A I don't think anyone was.

"Q Did somebody come in after you got there?

"A Gary.

"Q About how long?

"A Five or ten minutes, I suppose.

"Q Did anybody else come in?

"A Georgia with Ferguson.

"Q About how long was that?

"A Not long afterwards, five or ten more.

"Q What did Ferguson, who I believe was called Kingfish, what did Ferguson say had happened, if anything, when they came in?

"A Said they had robbed a bank.

* * *

"Q All right. Did he say or indicate anything about whether or not the robbery had gone according to the plan?

"A Said he thought it had.

"Q All right, and then what happened after that, after Etheridge got there about five minutes later, and then Georgia comes in with Ferguson, then what happened?

"A It wasn't long Gary, and Ferguson went to the picture show.

* * *

"Q Now Bostic and Cole at this time, when you went home, and Gary and Ferguson went to the movie, where were they supposed to be?

"A Hid in the woods.

"Q And state again for the jury who was supposed to pick them up and what time.

"A Georgia was going to pick them up about dark.

"Q All right. And you say you saw Gary the next time that night, where was that?

"A Perry Patten's house.

"Q And what was the purpose of going over there?

"A Split up the money.

"Q Who was there?

"A Me, Gary, Cole, and Bostic. Georgia took Patten and his wife off on the bike up there for something.

"Q Georgia took Perry Patten's wife out of the house so she wouldn't be there?

"A Right . . . ."

Codefendant Beard occasionally worked for a home construction flooring subcontractor. At trial Beard's employer, Maxie Carney, testified as follows:

"Q Now, did you have any conversation with Eugene Beard about the Third National Bank robbery?

"A We discussed it, because it had been robbed recently.

"Q All right. What did he say to you about that robbery?

"A He said that was the way that a bank should be robbed, they just played it cool, just walk in and be firm with them, and said something about you know just cut the camera wire and do it and get it over with in a hurry, but he didn't say he had anything to do with it.

* * *

"Q Did he say anything to you about any money in that connection?

"A Well, he ended up with twelve hundred dollars.

"MR. QUILLEN: We object to that, that's a conclusion.

"THE WITNESS: Most of the money was turned green.

"THE COURT: Is he stating that as what he said?

"THE WITNESS: Yes, sir, that's what he said. He said that the money was ruined because there was a——

"Q Let me ask you this first. How much money did he tell you he got out of it?

"A Twelve hundred dollars.

"Q Now what is this about the money being green?

"A Said there was a pill in the sack of money was in and it went off and ruined the money.

"THE COURT: Said what? I didn't understand you.

"THE WITNESS: Ruined the money.

"THE COURT: What went off?

"THE WITNESS: Something.

"MR. MERRITT: He said a pill.

"Q What do you mean by a pill?

"A I don't know, a bomb, I guess, in the money.

"Q A bomb went off and what did he say about that?

"A It turned the money green.

"Q You mean the money from the bank robbery?

"A Turned the most of it green.

"Q Did he tell you how much good money was left?

"A About two thousand dollars. He was just wanting to know how to clean the money, how to get the green off of it.

"Q He was asking you about that?

"A Yes, sir.

"Q What did he ask you about that? What was that conversation?

"A He just asked me if I knew, said he didn't know how, he had tried everything.

"Q What did you tell him?

"A I didn't know either. I told him there ought to be some way, but I didn't know how to do it."

There was testimony by bank employees that such a bomb was placed in the money sack taken from the Third National Bank.

Olympia Linda Letos, who had been traveling with the group, testified concerning Gary Lee Etheridge's role as described by Ferguson just before the attempt to rob the Bank of Orlinda:

"Q Who was in the room at this time?

"A Larry Ferguson, Jimmy Jenkins, Eugene Beard, myself, at the time we were talking about this.

* * *

"Q All right, Linda, to repeat the question what did Larry Ferguson tell you about Gary Etheridge's role in this burglary?

"A He said that he was the big man in this bank robberies and burglaries, and that's how he said it, that he is the big man over it all, and that he supposely cased out all the places ahead of time, and he checked to see if there were any policemen patrolling the area, and he let them know the safest time to go in, and just—he looked out for them if they got in any trouble. Larry said that he was the man to get them out no matter what the cost was, just to keep their mouth shut is what he said.

"Q Did Ferguson or Beard at that time or previously tell you exactly what Gary Etheridge was supposed to do in connection with this [Bank of Orlinda] burglary?

"A Yes, he was supposed to drive the car and he was supposed to park up the road——"

Miss Letos also described the plan for the Bank of Orlinda robbery and the frustration of its failure:

"Q All right. And after you had been over there a while, where did you go and who went?

"A We went back to Eugene Beard's room, and everyone—they were preparing to go to Orlinda.

"Q Now who was present in the room at the time you are talking about?

"A Eugene Beard, Jimmy Jenkins, Larry Ferguson, and James Bostic.

"Q Now you say you—they were preparing to go to Orlinda, do you recall what was said about Orlinda, what comments were made that afternoon?

"A Yes, sir. James Bostic said that this bank was a cinch because he gave me the impression that he had been in that area, and knew his way around.

"MR. BINKLEY: Objection to her impression.

"THE COURT: Not the impression, but what he said.

"THE WITNESS: He said he knew a person who tried that bank, but they didn't have those tanks.

"Q Didn't have the tanks——

"A That would go through a nickel head safe.

"Q Do you recall him saying anything about the police situation around Orlinda?

"A Yes, he said there was only one cop—policeman. I'm sorry—patrolling the area, and didn't have to worry about him.

"Q All right. Did they say anything at that time about anybody else who was going to participate in this burglary?

"A Yes, sir, they said that Gary Etheridge was going along, and so would Sammy Cole, and they said that Gary Etheridge was going to sit in the car with one of the walkie-talkies—not directly in front of the bank, but a little ways from it so that he could tell when the policeman drove up close to the bank, he could notify them in case something happened.

"Q Did you at any time while you were up there, did you see Gary Etheridge?

"A Yes, I did. I was sort of nosy, if you want to know the truth. I still—this was all new to me. I saw Gary Etheridge, and Sammy Cole get into their T-Bird that they had there.

* * *

"Q All right. Now do you recall approximately what time James Bostic came back that evening?

"A Yes, it was almost midnight, because they were late getting back, Judy Sineath and James Bostic, because they were supposed to go to Orlinda right at twelve o'clock, they wanted to get there at midnight.

"Q All right. Who left after Bostic got back, who left?

"A Well, before Bostic got back, we, James Jenkins, Larry Ferguson, and Eugene Beard and myself, went down to the car, and this is where I'm confused, I can't remember which car they moved the tanks from, but they moved the tanks out of one of the cars and put it in the other one in the back, one they were going to take with them. They were preparing to go.

"Q Did you see them when they left for Orlinda?

"A Yes, sir, I did, looked out the window, and Gary Etheridge, Sammy Cole and Larry Ferguson rode in the same car.

"Q What car was that, if you know?

"A His T-bird.

"Q Whose T-bird?

"A Excuse me, Gary Etheridge's T-bird.

"Q And who else went? Who else did you see leave?

"A Eugene Beard, Jimmy Jenkins and James Bostic.

"Q When is the next time you saw Larry Ferguson, James Bostic, Jimmy Jenkins, and Eugene Beard?

"A It was early the next morning, real early the next morning.

"Q What kind of condition were they in when you saw them the next morning?

"A They had mud all over them and poor Larry has lost his shoes.

"Q Larry had lost his shoes?

"A Yeah.

"Q Were they talking to him about that?

"A Yeah, they were kidding Larry, because he had lost his shoes, and he said they were real nice ones, and he had spent quite a bit of money for them.

"Q Did they tell you anything about what had happened to them?

"A Yes, they—Eugene Beard, James Bostic, and Larry Ferguson, Jimmy Jenkins, told me that they had went into the bank, all of them were talking at one time, and that they were getting ready to put the torch on the safe when a light came on

upstairs, and then they told me that they heard a voice. Eugene told me this, that he heard a voice upstairs say, we've got you now, and so they said they just ran as fast as they could, and how come they were muddy, because they ran through the mud and it was all messy from the rain the night before."

Appellant Beard testified at trial that he and Ferguson had planned a burglary and planned to pick up a stolen car to use it on the day Ferguson was murdered.

"Q Now the part that was true, was that you met Ferguson by pre-arrangement out at the Burger Boy, is that right?

"A Yes, sir, I met him out there.

"Q And the reason for meeting him out there was what? I'm not too clear about that. What were you all going to do?

"A Well, he planned—a friend of his worked at a place on Murfreesboro Road, supposed to have some money in it, and we were going to go over there and get it.

"Q Go over there and get it?

"A Yes, sir.

"Q You mean you were going to burglarize the store?

"A Yes, sir.

"Q Who else knew about this?

"A I don't know. Myself and Larry; I don't know who he told.

"Q You don't know who he talked to, you didn't talk to anybody else about it, did you?

"A No, sir, I didn't even know where the place was at."

Several witnesses testified to the dying declarations of Larry Ferguson. He had been shot five times, but escaped from the scene of the shooting and staggered on to the front porch of the home of some people named Watson, where he died from loss of blood. Mr. Watson, a stranger to Ferguson, testified:

"Q The first question you asked him was what? What did you say to him?

"A I said what's your name, boy, and he said, Larry Ferguson.

"Q I see. And what was the next question? Did you ask him another question?

"A I asked him what was the matter with him, and he told me he was shot.

"Q That he had been shot?

"A Yeah.

"Q And what else did you ask him?

"A I asked him who shot him, and he told me who he said shot him.

"Q Who did he say?

"A Eugene Beard.

"Q Said Eugene Beard shot him?

"A Yes, sir, I asked him what about.

"Q Asked him how come, what about?

"A I asked him why did they get into it, and how come him to shoot him, and he said because he knew too much about some bank robbing."

Still another witness, Mrs. John Leeman, testified to the purpose of a hole found near the site where Ferguson was shot:

"Q Mrs. Leeman, do you recall the morning of Friday, November 3rd?

"A Yes, sir.

"Q I'll ask you if Mrs. Etheridge was at your house that morning?

"A Yes, sir, she was.

"MR. WILSON: What was that date?

"MR. MERRITT: I believe it was Friday, November the third. It was on a Friday.

"Q Is that right?

"A Yes, sir.

"Q On a Friday morning?

"A Yes, sir.

"Q Prior to the commencement of the trial of this case?

"A Yes, sir.

"Q At that time did Mrs. Etheridge know that your husband was going to testify as a government witness in this case?

"A No, sir.

"Q Was he there that morning?

"A No, sir.

"Q Would you state to the jury what, if anything, she may or may not have said to you concerning a hole in the ground up in Statesville, Tennessee?

"A She just said that the hole that was dug up there was for this Larry Ferguson to be put in.

"Q Was for Larry Ferguson to be put in?

"A Yes, sir."

Although much of the evidence was disputed at trial (either as to fact or the inferences to be drawn from the facts) as to each of the defendants, there was much additional proof supporting the jury findings. Some of this is summarized below.

A young man named Starks testified to a conversation in May of 1967 wherein Gary Lee Etheridge and Cole sought to recruit him to join in some burglaries.

Jim Allen Freeman testified that during the month of September 1967 Larry Ferguson told him that there was a plan for a bank robbery with some friends of his and asked whether Freeman wanted in on it. Freeman said that Ferguson had identified Leeman and another person named Gary as being among the friends who were involved, and described Gary as "a big man."

Charles Bobo testified that defendant Self told him that he, Self, was in with the people who robbed the Third National Bank.

Officer Donald E. Monday, an officer of the Nashville Metropolitan Police Department at the time of these events, testified to fingerprinting James Self, and a Sergeant James P. Gossett, of the same police department, testified that this fingerprint was identical with a latent print taken from a Pontiac automobile with a Tennessee license plate, JZ 3680, which an eyewitness to the robbery of the Third National Bank had testified was the license plate on the get-away car used in that robbery.

Howard Whitaker testified that he was with defendant Self when Self stole a white Cadillac automobile which Self later told him had been used in the robbery of the Bordeaux Bank.

An FBI Agent Hillin testified that in questioning Beard, Beard told him of a plan formulated in May of 1967 to rob the Thompson Lane branch of the Commerce Union Bank. Hillin testified that Beard indicated that he, Beard, was to be the get-away driver in that bank robbery, but the robbery itself never came off.

A witness named John Vaughn testified that appellant, Beard, a month or so before the murder of Ferguson, told him that Ferguson was "talking too much and had to be taken care of." Vaughn also testified that Beard came by the filling station where he worked the morning of the Ferguson murder and

told him that he had shot five times "at a guy that shot at him." Vaughn also testified that that same Saturday morning Beard said that he was going to "pick up $300 or $400."

A witness named Lloyd Best testified that he had known Beard since he was 10 or 11 years old and that sometime in the early summer, which Best later identified as March or April, Beard told him that "a boy ratted on him and he was going to take care of him." Best also testified that he saw Beard on the Saturday morning of the murder and that Beard told him "I guess the police will pick me up today."

A witness named Eva Coffelt testified that appellant Beard told her in August that Larry Ferguson was trying to frame him and that "Kingfish's days were numbered."

Max Carney, Beard's employer, also testified that Beard told him a month before the Ferguson murder that Ferguson "was going to cause him a lot of trouble by telling everything he knew on him" and that "he had to get rid of him." Carney also testified that at that same time Beard tried to borrow Carney's 30-30 rifle.

Appellant Beard employed Gary Etheridge's Honda for the trip to meet Ferguson on the morning of Ferguson's murder. He left for that trip from Gary Etheridge's house. He called the Etheridge house shortly after the murder had occurred. He returned to the Etheridge house where he was arrested at 3 o'clock that same afternoon.

Charles Bobo testified that while he, Bobo, was in jail, about the middle of September 1967, Gary Etheridge came to the jail and talked to him about killing Ferguson. He testified that there was some mention of a $500 fee and that "it was because he was trying to involve him in some bank robberies, you know, with the FBI."

Coconspirator Leeman testified that he had a discussion with Etheridge about reports that Ferguson was talking to the FBI.

Don Ferguson, the brother of the deceased Larry Ferguson, testified that appellant Beard told him that if his brother (Larry Ferguson) "didn't start cooperating and getting in touch with Gary Etheridge and get in touch with Gary Etheridge or come out to his house, that something was going to happen to him and said that it wouldn't be him that Gary Etheridge—it wouldn't be him or Gary Etheridge that done it, but it would be someone that Gary Etheridge would have do it."

Witness Olympia Linda Letos testified that Gary Etheridge told her that someone had been giving information about banks and he was worried. She said that Etheridge said, "he had an awful lot to lose, and he would blow somebody's head off if they messed him up."

We have indulged in such a complete recital of the facts because we believe it serves to aid materially in answering the legal issues presented by these appeals.

The substantial appellate issues appear to us to be as follows:

1. Under the facts in this case, was Ferguson's murder committed to "avoid apprehension" within the meaning of 18 U.S.C. § 2113(e) (1964)?

2. Did the evidence support the government's theory that the robberies and the murder were part of a single continuing conspiracy?

3. Was Ferguson's dying declaration admissible in evidence?

4. Should the convictions be reversed because of the admission of hearsay evidence?

1. Was Ferguson's Murder Committed in an Attempt to "Avoid Apprehension" Within the Meaning of 18 U.S.C. § 2113(e) (1964)?

The first and possibly most important issue in this appeal is whether the substantive charge of murder "to avoid apprehension" and the charging of the same events as overt acts in the conspiracy count were authorized by section 2113(e). This appears to be a question of first impression in the federal courts. There are no cases clearly in point and the legislative history does not seem to us to be very enlightening.

Section 2113 was originally adopted in 1934 against a background of national concern with interstate operations of bank bandits. It was designed to make it a federal offense to rob federal banks or federally insured banks. Subparagraph (e) was a part of the statute from its inception. It provides:

"Sec. 3. Whoever, in committing any offense defined in this Act, or in avoiding or attempting to avoid apprehension for the commission of such offense, or in freeing himself or attempting to free himself from arrest or confinement for such offense, kills any person or forces any person to accompany him without the consent of such person, shall be punished by imprisonment for not less than 10 years, or by death if the verdict of the jury shall so direct." 18 U.S.C. § 2113(e) (1964).

The statutory language itself suggests that part of the congressional purpose was to provide protection to those who aid law enforcement in apprehension of bank robbers, by providing a federal penalty for anyone who kidnapped or killed such a person. Further, the statute clearly envisages making it a federal crime to kill or kidnap anyone in an attempt to escape arrest or imprisonment for bank robbery. This would seem to be evidence that Congress did not intend that a limitation as to remoteness in either time or distance of a murder in an attempt to avoid apprehension be read into the statute.

These observations are particularly relevant to appellants' argument that we should limit the effect of the federal murder penalty to those murders committed "in the course of" robbery of federal banks. By this phase appellants seek to restrict the murder provision to cover only murders during the robbery or when the law enforcement authorities are in hot pursuit. They point to both a Senate Committee Report: S. REP. No. 537, 73d Cong., 2d Sess. (1934), and a report of the Attorney General printed in H.R. REP. No. 1461, 73d Cong., 2d Sess. (1934), as employing this language. These reports, of course, do accurately describe the main purpose of the murder provision. They do not, however, contain any language purporting to limit the murder provision only to murders "in the course of" the robbery. If they were read as suggesting such a limitation, both reports would be in square conflict with the language of section 2113(e), which is the plainest sort of statutory language pertaining to murder during escapes. Further, the House Committee Report, H.R. REP. No. 1461, *supra*, on this same legislation employed the much broader phrase "in connection therewith [the robbery]" to describe the murders included within section 2113(e).

Two courts have dealt with and rejected the hot pursuit or "in the course of" argument. In *Gilmore* v. *United States*, 124 F.2d 537 (10th Cir. 1942), the Tenth Circuit dealt with a murder of a policeman committed while a convicted bank robber was seeking to escape from jail. The court said:

"It is urged however that in order to constitute an offense under section 3, the killing must accompany and be an incident of the robbery, not follow separately and distinctly in point of time. The statute provides in clear language that where a

person kills another either in committing the offense of robbery of a bank, as defined in the act, or in avoiding or attempting to avoid apprehension for the commission of such offense, or in freeing or attempting to free himself from arrest or confinement for such offense, he shall be punished as therein specified. It is to be remembered that these several provisions are in the disjunctive, thus indicating a legislative purpose to make each a separate and distinct offense. Arrest sometimes occurs at the time and place of the commission of an offense. But ordinarily confinement follows separately and distinctly in point of time and place; and in the very nature of things, escape or attempted escape from confinement is generally quite apart in respect of time and place from the commission of the offense for which the person is confined. It therefore is clear that Congress did not intend to restrict the section to instances where murder is committed at the very time of the robbery itself. And it cannot be said that murder committed in attempting to escape from confinement for the offense of robbing a national bank is so unrelated to the offense of the robbery as to fall beyond the legislative reach of Congress to make penal." *Gilmore* v. *United States*, *supra*, at 540.

In *Clark* v. *United States*, 184 F.2d 952 (10th Cir. 1952), a defendant was convicted of bank robbery and of forcing employees to accompany him to avoid apprehension. As against defendant's claim that the "avoid apprehension" language was not Constitutional, the court said:

"Congress having the power to define the offenses in 588b, it also has the power to make it a crime for an offender to avoid apprehension or to escape from arrest or confinement after the commission of the offense. Murder or kidnapping committed in avoiding or attempting to avoid apprehension for robbing a national bank and escape or attempted escape from arrest or confinement for this offense are all interrelated and may not be simultaneous with the robbery. Time and place of the offense is not the constitutional test, but the relation of the offense to the robbery. As was said in Gilmore v. United States, supra [10 Cir., 124 F. 2d 540], 'It cannot be said that murder committed in attempting to escape from confinement for the offense of robbing a national bank is so unrelated to the offense of the robbery as to fall beyond the legislative reach of Congress to make penal.'" *Clark* v. *United States*, *supra* at 954.

We agree with the Tenth Circuit's interpretation of this statute. We also observe that we can conceive of no reason why Congress, having made bank robbery a federal crime, could not also make it a federal crime to commit murder to avoid apprehension for such a bank robbery.

In dealing with this issue, however, our principal reliance is neither on the House Report nor the Tenth Circuit cases. It is rather upon the common understanding of the language of the statute itself. Congress in our view plainly sought to make it a federal crime to commit murder in order to avoid or to attempt to avoid apprehension for the offense of federal bank robbery. If Congress had intended to limit its prohibition on murder in section 2113(e) to those committed in hot pursuit or murders committed "in the course of" bank robberies, we believe it could and would have used appropriate language to do so.

We recognize, of course, that it is appropriate to construe criminal statutes strictly and to resolve ambiguities in favor of the defendant. *Federal Communications Commission* v. *American Broadcasting Co., Inc.*, 347 U.S. 284 (1954); *United States* v. *Swarthout*, —— F. 2d —— (6th Cir. 1970) (Decided January 22, 1970).

But we find no ambiguity in this statute. Murder "in avoiding or attempting to avoid apprehension for the commission of [the] offense" of federal bank robbery, in our opinion, plainly encompasses the killing of a bank robbery coconspirator to keep him from talking to the FBI and thus causing the apprehension of his fellow bank robbers.

This is exactly what the jury found by its verdicts that Etheridge and Beard had done in this case. The evidence which we have quoted or summarized was competent to support these verdicts.

II. Was There a Single Continuing Conspiracy?

The indictment charged several individuals with joining in a common plan to commit bank robberies and burglaries. The murder of Ferguson was charged as an overt act of the general conspiracy designed to save the conspirators from apprehension.

Appellants claim that the general conspiracy had terminated before the murder, and that, in any event, the plot to kill Ferguson was an entirely separate conspiracy designed to conceal evidence and should have been charged and tried as such.

In this regard appellants rely upon *Krulewitch* v. *United States*, 336 U.S. 440 (1949), and *Grunewald* v. *United States*, 353 U.S. 391 (1957).

This case, however, is clearly distinguishable from *Krulewitch* and *Grunewald*. In those cases the central object of the conspiracy had clearly been completed. It is "the conspiratorial period [that] lies at the heart of the problem." *United States* v. *Hickey*, 360 F.2d 127, 140 (7th Cir.), *cert. denied*, 385 U.S. 928 (1966). If the central object of the conspiracy has been accomplished, evidence of subsequent events designed to conceal that accomplishment cannot be presented under the theory that there was an implied conspiracy to conceal the completed crime. *Grunewald* v. *United States*, 353 U.S. 391 (1957).

We think, however, that the prosecution alleged and proved a conspiracy to rob and burglarize banks which continued up to and including the date of Ferguson's death. Evidence was presented which tended to show a meeting in September at which another robbery was being planned. Ferguson was killed, and the defendants were apprehended, however, on September 23, before the robbery came to fruition.

Further, there is testimony of one coconspirator, Beard, of a plan to employ a stolen car in a burglary on the day that Ferguson was murdered. Indeed, there is no evidence that the conspiracy ended or that any conspirator withdrew from it except as occasioned by arrest by law enforcement officials. A conspiracy, especially one which contemplates a continuity of purpose and a continued performance of acts, is presumed to continue until there has been an affirmative showing that it has terminated; and its members continue to be conspirators until there has been an affirmative showing that they have withdrawn. *Hyde* v. *United States*, 225 U.S. 347, 366–67 (1912); *Pinkerton* v. *United States*, 328 U.S. 640 (1946); *Poliafico* v. *United States*, 237 F.2d 97, 106 (6th Cir. 1956), *cert. denied*, 352 U.S. 1025 (1957); *Continental Baking Co.* v. *United States*, 281 F.2d 137, 155 (6th Cir. 1960); *United States* v. *Stromberg*, 268 F.2d 256 (2d Cir.), *cert. denied*, 361 U.S. 863 (1959); *Marino* v. *United States*, 91 F.2d 691 (9th Cir. 1937).

In this case the proofs allowed the jury to find that Gary Lee Etheridge, Georgia Etheridge and Beard knew of the specific plan to kill Ferguson. The jury could have found that appellant Cole was an active participant in conspiracy to rob banks and

that he was in close proximity on the day of the murder to the Etheridge house which Beard used as a base for the trip on which the murder occurred. Cole certainly had not withdrawn from the conspiracy.

As to Bostic, although he had been returned to the penitentiary sometime before Ferguson's murder, there is no evidence that he had renounced or withdrawn from the conspiracy.

In *United States* v. *Kissel*, 218 U.S. 601, 607–08 (1910), Justice Holmes stated that "when the plot contemplates bringing to pass a continuous result that will not continue without the continuous cooperation of the conspirators to keep it up, and there is such continuous cooperation, it is a perversion of natural thought and of natural language to call such continuous cooperation a cinematographic series of distinct conspiracies, rather than to call it a single one. . . . A conspiracy is a partnership in criminal purposes. That as such it may have continuation in time is shown by the rule that an overt act of one partner may be the act of all without any new agreement specifically directed to that act."

In *Pinkerton* v. *United States*, 328 U.S. 640 (1946), Justice Douglas, after quoting *Kissel*, went on to explain:

"A different case would arise if the substantive offense committed by one of the conspirators was not in fact done in furtherance of the conspiracy, did not fall within the scope of the unlawful project, or was merely a part of the ramifications of the plan which could not be reasonably foreseen as a necessary or natural consequence of the unlawful agreement. But as we read this record, that is not this case." *Pinkerton* v. *United States*, *supra* at 647–48.

We believe that the quieting of a conspirator, under the facts of this case, was done "in furtherance of the conspiracy," that it fell "within the scope of the unlawful project," and that it could "be reasonably foreseen as a necessary or natural consequence of the unlawful agreement."

Furthermore, Wharton on "Homicide" has stated:

"When men confederate together to commit crimes, of such a nature or under such circumstances as will, when tested by human experience, probably result in taking human life if such necessity should arise to prevent anything from thwarting them, it must be presumed that they all understand the consequences which may reasonably be expected to flow from carry-

ing their plans into effect, and that they assent to the taking of human life if necessary to accomplish their object." WHARTON, HOMICIDE 658 (3d ed. 1907).

See also Boyd v. *United States*, 142 U.S. 450 (1892).

We conclude that on this record, charging the murder of Ferguson as an overt act under the conspiracy count did not constitute reversible error. The evidence convinces us, as it did the District Judge, that this conspiracy continued until after the murder had been committed. There was evidence that killing of informants was a part of the general plan for operation of the bank robbery ring. There was specific evidence that a number of the coconspirators knew of and participated in planning of the Ferguson murder.

We recognize as to appellants Bostic and Cole that there is no specific testimony that they had knowledge of the plan to do away with Ferguson. But there is ample evidence that they knowingly joined and participated in a conspiracy to commit armed robbery of banks. We conclude that the murder actually committed must be viewed as within the reasonable contemplation of those who formulated and participated in the bank robbery scheme and was in furtherance of the plan.

III. The Dying Declaration

As to the dying declaration of Ferguson, which we have quoted above, the District Judge was well within the discretion vested in him when he admitted it into evidence. *Shepard* v. *United States*, 290 U.S. 96 (1933). Ferguson had been shot five times in the head and body with a .38 caliber pistol. His own statements indicated that he contemplated death and, indeed, he died very shortly after making the declaration.

In ruling the declaration admissible, the District Judge said:

"In this case, all of the facts, as I recall them, as testified to by this witness, proposed witness, are indicative of rationality, rational mind and of a consciousness of impending death with one exception which I will note in a moment.

"First we have the fact that here was a man who was shot five times, five bullets from a revolver having entered his body. We have the fact that he drove the car up to the house. He blew the horn to get the attention of someone in the house. He

got out of the car and leaned over against the car door. He then made his way to the front porch and was able to knock on the door several different times. Then he made the declarations which were attributed to him to the effect that he wanted to make a confession, and I believe some statement to the effect, referring to God or to the Lord, and then he made a statement identifying his assailant, the person who shot him, and then the reason for the shooting. Then he made a statement to the effect that at least open the door and call an ambulance.

"In this pattern of circumstances, the only possible statement that I see that would indicate that the deceased may at that time have had some lingering hope of survival was the statement that he would like for an ambulance to be called. Certainly all of these circumstances taken together would indicate a rational mind, not an irrational mind.

"I find a Missouri case quoted in the footnote in 'Underhill's Criminal Evidence,' 5th Edition, Section 288, page 931, referring to a Missouri case, State v. Evans, 124 Missouri 397, where it was said:

> "'The mere fact that the victim, while writhing under the torments of a murderous blow, seeks relief from anguish by sending for a physician is not indicative of a hope of life, but a natural desire to be relieved of pain.'

"When I take all of these circumstances together in this case, the reference to the ambulance, I think, could be given no greater significance than the statement in this Missouri case in which the declarant asked for a physician.

"So I am satisfied first that these statements were made at the time when the declarant was of rational mind; secondly that they were made without any hope of survival; that this man had knowledge of the fact that he was going to die, that death was imminent. All of the circumstances together indicate that clearly in my mind."

Like the District Judge, we have no doubt that under the facts of this case the statements previously noted from Ferguson were dying declarations.

As to the admissibility of the opinion or conclusion pertaining to the cause of his murder ("because he knew too much about some bank robbing"), the Supreme Court, speaking through Justice Cardozo, has held:

"The form [of a dying declaration] is not decisive, though it be that of a conclusion, a statement of the result with the antecedent steps omitted. Wigmore, § 1447. 'He murdered me' does not cease to be competent as a dying declaration because in the statement of the act there is also an appraisal of the crime. *State* v. *Mace*, 118 N.C. 1244; 24 S.E. 798; *State* v. *Kuhn*, *supra*. One does not hold the dying to the observance of all the niceties of speech to which conformity is exacted from a witness on the stand. What is decisive is something deeper and more fundamental than any difference of form. The declaration is kept out if the setting of the occasion satisfies the judge, or in reason ought to satisfy him, that the speaker is giving expression to suspicion or conjecture, and not to known facts. The difficulty is not so much in respect of the governing principle as in its application to varying and equivocal conditions. *Shepard* v. *United States*, 290 U.S. 96, 101 (1933).

The section of Wigmore cited with approval by Justice Cardozo contains this additional reasoning:

"*Rule against Opinion Evidence*. The Opinion rule has no application to dying declarations. The theory of that rule (post, § 1918) is that, wherever the witness can state specifically the detailed facts observed by him, the inferences to be drawn from them can equally well be drawn by the jury, so that the witness' inferences become superfluous. Now, since the declarant is here deceased, it is no longer possible to obtain from him by questions any more detailed data than his statement may contain, and hence his inferences are not in this instance superfluous, but are indispensable." 5 J. WIGMORE, EVIDENCE § 1447 at 247 (3d ed. 1940).

Although the authorities just cited are not modern, the Supreme Court has recently renewed its adherence to the admissibility of dying declarations. *Pointer* v. *Texas*, 380 U.S. 400, 407 (1965). We believe that the statement objected to was within the scope of the dying declaration and that the authorities we have cited support the proposition that its admission did not represent any abuse of discretion by the trial judge.

IV. Admission of Hearsay Evidence

Although the briefs of various appellants complain of the prejudicial effect of the District Judge's admission of inadmissible hearsay, little effort was made to point to specific instances of inadmissible and prejudicial testimony.

The general rule in conspiracy cases is, of course, that the statements of one of the coconspirators during the course of and in furtherance of the conspiracy are admissible against all coconspirators. *Logan* v. *United States*, 144 U.S. 263, 309 (1892); *Brown* v. *United States*, 150 U.S. 93, 98 (1893); *United States* v. *United States Gypsum Co.*, 333 U.S. 364, 393 (1948); *see also* 4 J. WIGMORE, EVIDENCE § 1079 (3d ed. 1940).

We believe that most of the hearsay which was claimed to be objectionable (such as Linda Letos' statements about the Bank of Orlinda burglary quoted above) was admissible as to all conspirators on this ground.

We recognize that some of the testimony of Judy Farmer pertaining to Bostic's statements to her while plainly made in the course of the conspiracy might be asserted to show no purpose of furtherance of the plan since they pertained to past events. These statements were, however, clearly admissible as to Bostic, since they were claimed to have been made by him and we are satisfied that the District Judge carefully instructed the jury on the proper limitations of use of the statements as to other of the coconspirators.

As to the hearsay issue, we find no reversible error.

Other issues appear to us to require less discussion.

The grant or denial of severance of trials or change of venue in a federal criminal case is largely a matter of discretion with the trial judge. *Olmstead* v. *United States*, 19 F.2d 842 (9th Cir. 1927), *aff'd* 277 U.S. 438 (1928); *United States* v. *Buskirk*, 304 F.2d 871 (6th Cir. 1962). On the facts of this case we find no abuse of discretion.

Appellant Beard's reliance upon *Massiah* v. *United States*, 377 U.S. 201 (1964), is, we believe, misplaced. *Massiah* was questioned by a federal agent after indictment and without waiver of presence of his lawyer (and without even knowledge

that he was being interrogated by a federal agent). No such thing happened to Beard. The United States District Attorney at Leeman's request did come to the jail and talk to Leeman. We think that Leeman knowingly and positively waived presence of his lawyer. Beard's protest, of course, is designed to suggest that the government by this process unfairly secured and used information which Leeman had received from his lawyer, who at the time was also representing Beard. This Leeman denied under oath. Neither Beard nor his lawyer made any showing of actual prejudice. We find no merit in this issue.

We find no other material appellate issues.

We believe that these appellants were accorded a fair trial before a careful and able judge and a very discriminating jury. As we have noted, the jury brought in six not guilty findings in relation to four defendants. As to all of the appellants, there was competent evidence from which the jury could have found them guilty beyond reasonable doubt on all counts where guilty verdicts were returned.

The judgments of conviction are affirmed.

Supreme Court of the United States

No. 5250, October Term, 1970

JAMES HERMAN BOSTIC, PETITIONER

v.

UNITED STATES

On petition for writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

January 11, 1971.

[1] In the United States District Court for the Middle District of Tennessee, Nashville Division

No. 14102

UNITED STATES OF AMERICA, PLAINTIFF

vs.

GARY LEE ETHRIDGE, GEORGIA ETHRIDGE, WILLIAM EUGENE BEARD, JAMES HERMAN BOSTIC, JOHN W. LEEMAN, SAMMY RAY COLE, AND JAMES RICHARD SELF, DEFENDANTS

Before: The Honorable WILLIAM E. MILLER, Judge, and a Jury

TRANSCRIPT OF PRE-TRIAL PROCEEDINGS AND MOTIONS

Nashville, Tennessee, October 4, 18, 26, 31, 1967

[2] APPEARANCES

Mr. Gilbert S. Merritt, Jr., United States Attorney, *Mr. Alfred H. Knight, III*, Assistant United States Attorney, United States Courthouse, Nashville, Tennessee, for the plaintiff.

Mr. William C. Wilson, Garfinkle, Farriss, High and Wilson, Stahlman Building, Nashville, Tennessee, for the defendants Ethridge and Cole.

Mr. Dale Quillen, 338 46th Avenue North, Nashville, Tennessee, *Mr. Jack Lowery*, Lebanon, Tennessee, for the defendant Beard.

Mr. Thomas C. Binkley, Howser, Thomas and Summers, Court Square Building, Nashville, Tennessee, for the defendant Bostic.

For the defendant Leeman: (not represented.)

Mr. James H. Bateman, Bateman, Bateman and Pope, Stahlman Building, Nashville, Tennessee, for the defendant Self.

[3] * * * * *

[4] October 4, 1967, 2:35 P.M.

[5–66] * * * * *

[67] * * * * *

The COURT. Well, in a hearing of this kind, the Court must look to the nature of the offense charged in determining bail, and as pointed out by the United States Attorney, the charges in this case are serious, grave charges indeed, involving conspiracy to commit bank robberies and alleging the execution of the [68] conspiracy by carrying out some of these robberies, other overt acts, finally including the charge of murder in the last count, count eight of the indictment, so it is an extremely serious situation.

I don't think I need to determine the strict legal question of whether or not hearsay in some circumstances may or may not be admissible in a hearing of this kind, because I think there's sufficient evidence here for me to go on, to pass on these matters from the FBI agent who directly investigated the charges and who certainly is entitled to express an opinion to the Court as to whether or not, as a result of his investigation, a certain defendant would pose a threat to the community.

It would be absurd for a Court to disregard the solemn sworn statement of an investigating officer in that respect, and as I pointed out before, the United States Attorney has a responsibility in this connection not simply to recommend bail, but to recommend that bail is granted in large amount or that it be disallowed. That is his responsibility, part of his responsibility, and we have here, in addition, the case of one of the defendants, Ethridge, that he made a direct threat to one of the witnesses to throw him in the river. At least it was apparently serious enough, [69] as far as he was concerned, that he took it serious and stood in fear as a result of it.

Statements that the second witness made about the telephone calls and the firecrackers and so forth, it's pretty thin proposition there to connect that with the defendant Ethridge. I wouldn't put too much weight on that type of testimony, but taking everything into account in this case, I find that the defendant Ethridge is not entitled to bail; the defendant Mrs. Ethridge will remain on the same bond that she's now under, twenty-five thousand dollars; and the other defendant, the same bond.

Mr. WILSON. Does Your Honor understand that she has been unable to make twenty-five thousand dollars bail?

The COURT. That's my understanding so far, yes.

All right, sir, anything else?

Mr. MERRITT. No, sir, that's all.

The COURT. All right, adjourn Court.

(Whereupon, Court was adjourned.)

[70] October 18, 1967, 9:15 A.M.

The COURT. Call the case for arraignment, Mr. Clerk.

The CLERK. Case 14,102, United States of America v. Gary Lee Ethridge, Georgia Ethridge, William Eugene Beard, James Herman Bostic, John W. Leeman, Sammy Ray Cole, and James Richard Self.

[71–72]

[73]

The COURT. All right, let pleas of not guilty be entered as to Beard under counts one, four, five, six, seven and eight, and let the record show that he is furnished at this time with a copy of the indictment.

James Herman Bostic.

Defendant BOSTIC. (Indicates)

The COURT. You are charged in counts one, two, and three of the indictment.

Do you have an attorney?

Defendant BOSTIC. No, sir.

The COURT. You do not have an attorney?

Defendant BOSTIC. No, sir.

The COURT. Speak up, I can't hear you.

Defendant BOSTIC. No, sir.

The COURT. Are you able to employ an attorney?

Defendant BOSTIC. Not at present.

[74] The COURT. Who do we have? Mr. Binkley here?

Mr. BINKLEY. Yes, sir.

The COURT. I'll appoint you, Mr. Binkley, to represent this defendant. You will of course take the forms under the Criminal Justice Act and see if he can qualify for appointment for an attorney under that Act.

Mr. BINKLEY. All right, sir.

The COURT. Pleas of not guilty will be entered on behalf of this defendant and let the record show he is now furnished with copies of the indictment.

[75–78]

[79] October 26, 1967, 9:10 A.M.

[80–82]

[83]

The COURT. Let's go on the theory that you are going to have to represent him either by the Criminal Justice Act or by compulsion of the Court one or the other, so let's go from there.

What do you want to do?

Mr. QUILLEN. I want this case postponed until [84] some later date, preferably sometime after the first of January, 1968.

The COURT. Now you represent one defendant out of one, two, three, four, five, six, seven defendants.

Mr. QUILLEN. Well now, I also——

The COURT. And you are asking for a postponement, and I've set this case, because of the importance of it, I've set it down at an early date to give everyone concerned a speedy trial, which they should have under the constitution.

Now what possible grounds do you have for postponement?

Mr. QUILLEN. Well, as stated in the affidavit, I have just presented to Your Honor, there is a very heavy schedule between now and the 13th.

The COURT. Yes, I can see that. You've got a lot to do which is commendable, but at the same time, this is an important case, a lot of people involved in it, and a lot of persons are incarcerated that are entitled to a speedy trial.

[85–87]

[88]

The COURT. When was this case set, Mr. Clerk?

The CLERK. On October the 18th.

The COURT. Set on October the 18th?

The CLERK. Yes, sir.

Mr. QUILLEN. It's one of the newest cases, I'm satisfied, that there is in the Court.

The COURT. One of the newest?

Mr. QUILLEN. Yes, sir.

The COURT. Well, I'd say that's probably right, one of the newest.

* * * * *

[89–116] * * * * *

[117] * * * * *

The COURT. Well, that's true. I think on the question of publicity, that these newspaper articles may be filed since you have filed a motion for a continuance on that ground.

Mr. Clerk, let those be filed, collective exhibit, but I don't think that's adequate showing to continue the case at this time, however I think that it will be necessary to carefully interrogate the prospective jurors and determine whether or not at that time it is possible to get a fair and impartial jury to try the case.

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[118] * * * * *

[119] October 31, 1967. 9:10 A.M.

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[120–134] * * * * *

[135] * * * * *

Mr. MERRITT. May it please the Court, just for the record, so Mr. Quillen will know in advance that he need not have any investigation, the government is going to agree to a severance of counts—what is it—four and five. That's the firearms count and the harboring count.

[136] The COURT. Firearms count and harboring count.

Mr. MERRITT. That is Beard is guilty of a firearms offense and also guilty of harboring of the fugitive Bostic. Bostic's lawyer has moved for severance of those two counts as prejudicial to him, and Mr. Quillen has moved for severance of those two counts, and we are going to agree to the severance.

The COURT. On four and five?

Mr. MERRITT. Yes, sir.

The COURT. And go to trial on what?

Mr. MERRITT. All other counts.

The COURT. And be no trial on counts four and five at this time.

Mr. QUILLEN. That will bring on an additional motion. I would like to move that that indictment then be dismissed in its entirety and that be prepared in such a form that will omit any reference at all to those two charges. I think it would be prejudicial to the defendant for the trial jury to have any knowledge of the fact that he and Bostic were charged in a count or that he was charged in a count of harboring this man Bostic, and also that he was charged with a violation of the revenue act.

The COURT. Well, can't that be handled by just not reading that portion to the jury?

Mr. QUILLEN. Of course, if they are handed a copy [137] of the indictment in their deliberations, they are going to see it.

The COURT. We can reframe that. We can recopy the indictment.

Mr. MERRITT. That doesn't mean there's not going to be any proof, because under our theory of the case, it's part of the conspiracy. That will have to be dealt with during the trial of the case, as an overt act in the conspiracy count.

The COURT. Are these two counts, the substance of these two counts referred to as overt acts in the conspiracy count?

Mr. MERRITT. Yes, sir, they are, and it's theory of the case that it's part of the conspiracy.

Mr. QUILLEN. I will move on behalf of Beard that those two matters be stricken.

Mr. MERRITT. We won't agree to that.

The COURT. What two matters? On the conspiracy count?

Mr. QUILLEN. Yes, sir, that firearms matter is strictly a revenue measure and couldn't possibly——

The COURT. Well, I'll consider that Monday when I pass on the other motions.

All right, call the next case.

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[138–143] * * * * *

[144] TRANSCRIPT OF PROCEEDINGS
November 6, 1967

* * * * *

[145–149]

[150]

Mr. BINKLEY. May it please Your Honor, if I have the privilege, I would like to join in some of these motions. As the Court will recall, I was appointed just about ten days ago.

The COURT. When?

Mr. BINKLEY. I think it was about ten days ago or two weeks.

The COURT. What defendant do you represent?

Mr. BINKLEY. I represent Bostic.

The COURT. All right.

Mr. BINKLEY. If I might, I would like to——

The COURT. I don't know whether you asked for that privilege in the beginning or not, but if the motions have to be considered anyway, I suppose it's all right.

Do you see any objection to that?

Mr. MERRITT. No, sir.

[151] The COURT. All right, go ahead.

Mr. BATEMAN. I would like to join in motion number one, number four, number five, number six, eleven——

The COURT. Just one minute.

All right.

Mr. BINKLEY. Sixteen, seventeen, eighteen; on nineteen, on my client it relates to counts two and three.

The COURT. All right.

Mr. BINKLEY. And twenty-one.

The COURT. Twenty-one?

Mr. BINKLEY. Yes, sir.

The COURT. You already have a motion for a severance, don't you?

Mr. BINKLEY. Yes, sir.

The COURT. Which relates to count four, I believe.

Mr. BINKLEY. Yes, sir.

The COURT. And I believe that that's already been severed, hasn't it, three and four, or four and five?

Mr. MERRITT. Four and five.

[152–161]

[162]

(Whereupon, a short recess was had after which the following proceedings were had in chambers:)

[163–170]

[171]

Mr. QUILLEN. Well, I seek a dismissal of the indictment for the reason that the government has poisoned its case by having discussed these matters with a defendant without any notice to me, that is both as to Leeman and Beard. Now I'm somewhat handicapped——

The COURT. Is that where you raise the Canon of Ethics proposition?

Mr. QUILLEN. Yes, sir, Canon 9.

[172] Also I feel handicapped by being unable to prove the prejudice without running the risk of making some further improper disclosure of a privileged communication.

I might state in this connection, of course the defendant Beard was, at the beginning, confined in the Wilson County jail. He was later removed to the Smith County jail, the Wilson County jail being about twenty-two or three miles from my office, and the Smith County jail about fifty-five miles away, and I had discussed with both sometimes matters—if they had not both been my clients, it might have been improper, would have been improper for me to divulge what one may have told me to the other, but I was satisfied that the only way I could properly prepare the defense for both of them was to try to obtain all facts that were available that either of them had any knowledge about, and in discussing with Leeman, I perhaps made suggestions to him in prodding his memory about things of matters that actually came to me from Beard, and it's my position at this time that because of what I say has been improper conduct on the part of the United States Attorney and agents whose actions are imputable to him that both Leeman and Beard have been effectively denied the assistance of counsel.

[173–176]

[177]

The COURT. Now, Mr. Binkley, what is your position?

Mr. BINKLEY. Well, if Your Honor please, I don't know—I agree with Mr. Wilson, I don't know how much I have been contaminated. I don't think—of course, I haven't been involved in the case as long as Mr. Quillen and Mr. Wilson have, and I haven't had an opportunity to work as closely as Mr. Wilson and Mr. Quillen have. Most of my conversations concerning preparation of the case has been with Mr. Quillen, and I don't know exactly how much detail we have gone into.

I've had several conferences with Mr. Quillen [178] and the things that we have discussed could be prejudicial to my client, but here if it were made known to Leeman and Leeman in turn made it known to the government, but again I don't know how my client has been prejudiced by this, but I have had discussions with Mr. Quillen concerning the defense of the case, feeling that we had the same position in several of the areas.

* * * *

Mr. BATEMAN. Might I ask, is Leeman the defendant [179] who was admitted to five thousand dollar bail?

Mr. MERRITT. Yes.

Mr. BATEMAN. If Your Honor please, this indicates to me that this relationship or some intimation of it is much older than even the date of the arraignment, because on the bond hearing in which the bond of seventy-five thousand dollars for my client was sustained by Your Honor, there was no showing of his implication in any of the counts in which he is charged.

To my recollection, his name was only mentioned once, and that was by triple hearsay, and Your Honor made his ruling as I understand it, on the basis of the expert opinion of the FBI agent who had supervised the investigation, and on the basis of the recommendation of the United States Attorney. This is the same United States Attorney who, presumably, had recommended five thousand dollars bond for the defendant Leeman.

The COURT. Wasn't that bond fixed by the Commissioner?

Mr. BATEMAN. Yes, sir, that's my understanding, on the recommendation of the District Attorney.

The COURT. Did the government later move to raise his bond? You didn't make a motion as to Leeman to raise it?

Mr. MERRITT. No.

[180]

Mr. MERRITT. My understanding is that each defendant is making a motion to dismiss the indictment in this case?

Mr. BINKLEY. Yes.

The COURT. So the record will so show it will be in that form.

Mr. MERRITT. So I can inform myself as to what I am responding to, is that the sum total of the motions, that the indictment be dismissed?

The COURT. That's my understanding so far.

Mr. MERRITT. First I'll get into the facts.

[181] The COURT. That's the only thing that's been suggested for me to do, that have been moved for me to do.

Mr. MERRITT. I'll get into the facts so far as the Court wants me to. Let me first say that the lawyers present have cited no case authority whatever for any such motion. Insofar as I know, there is no such case in existence, where an indictment has ever been dismissed on account of the fact that one of the witnesses became a government witness.

The COURT. One of the defendants.

Mr. MERRITT. One of the defendants became a government witness. I don't know of any such case as that.

Secondly, none of the lawyers here can say how and in what way their client's case has been prejudiced. If—I would think the Court might be concerned in some way if there were any specific showing of prejudice or if anyone could suggest how their client had been prejudiced.

Now as to the facts, let me say this, I never talked to Leeman until I believe the first time after the first of October. I never had any conversation with him at all, nor did anyone ever tell me prior to that time anything that Leeman said about the case.

The COURT. Make that first statement again.

Mr. MERRITT. My recollection is—I would have to check my records—my recollection is that I never had any conversation with Leeman until after the last of September.

[182]

[183] The COURT. Is this before the arraignment?

Mr. MERRITT. Yes, sir, all before the arraignment, and I told him at that time, I thought we could help him some, but I was not very specific. I told him I thought we could plead the conspiracy count, or some such thing as that, that I would have to think about it, and I didn't know what information he had, and it was my information that he was on the edge of the conspiracy, that he was not in it as far as at least some of the other defendants, and then he came back in a day or two later, and he had thought about it, and he said that he would be willing to testify for the government if the case were dismissed against him.

The COURT. This was still before the arraignment?

Mr. MERRITT. Yes, sir, that's correct.

And I thought about that, and he may have come back another time. I told him that I thought we could work it out on that basis, if he wanted to testify for the government, that that meant he would have to answer every one of my questions truthfully and the whole truth. I didn't want anything, any coloration or trying to get himself out of anything, he was going to have to tell the whole story on the basis of an agreement of that kind, and then at a date subsequent to that—I can supply the Court with the precise dates—but at a date subsequent to that, but I believe before the arraignment, [184] he came back up to my office, and I interviewed him in the presence of the FBI, Hank Hillin, an FBI agent, and Nick Norwood, and he began to tell his story, but had not told the whole story prior to the arraignment.

That was the sequence of events by which it happened.

The COURT. That last statement was after the arraignment, where you said he made a complete interview with the FBI?

Mr. MERRITT. I'm not sure whether that was before or after. I will have to supply the Court with the precise date. I have a record on that.

He has never disclosed to me any defense that any other defendant has at all. He has never disclosed to me what any other defendant says the defense is going to be, or he just made no disclosure to me about anything that, in my judgment, would prejudice the case.

Now if I understand Mr. Quillen's——

The Court. Prejudice the case other than the fact that he will be a government witness.

Mr. Merritt. He's going to be a government witness.

I might also say that Mr. Quillen has apparently accused me of improper conduct under Canon 9, and I don't want to be in position of accusing Mr. Quillen of improper conduct. [185] I do want to point this out to the Court, Mr. Wilson said of his relationship with Mr. Quillen in the case, and I wrote it down, Mr. Quillen and I have been very close in this trial. I take it by that, he meant in the preparation of the trial for the defendants, and Mr. Quillen represented Mr. Beard and Mr. Leeman.

It was my understanding up until the arraignment that he represented them as a paid attorney, so I knew that he was representing both Mr. Beard and Mr. Leeman, or at least that was what I thought at the time of the interview with Leeman.

Not only that, but I had had some indication that Mr. Quillen might also be representing the Ethridges at least jointly with Mr. Wilson, because of an unusual situation where Mr. Beard's interest in Lebanon were very much at stake in a lineup or in something that occurred up there, and another stage—and there was the bail hearing in Nashville on that same day, and Mr. Quillen was down here with the Ethridges at the bail hearing rather than at the hearing in Lebanon with Beard who also had a proceeding up there that same day.

I'm not saying there's anything wrong with that. I'm just saying insofar as the appearance to me; I wasn't sure who Mr. Quillen was representing. It seemed to me if he were fully representing Mr. Beard's interests, he would have been up there and not down here with the Ethridges. I'm sure he's [186] probably got a good explanation, but anyway, from my point of view it appeared that he had a clear conflict of interest between what may be the welfare of Leeman and Beard, and I didn't know. I thought maybe also the Ethridges, and Mr. Quillen could not afford to advise Mr. Leeman that he might should talk to the United States Attorney.

Now Mr. Quillen has subsequently told me that Mr. Leeman asked him about talking to the United States Attorney's office, and becoming a witness for the government, and Mr. Quillen advised him not to do it.

So now with respect to Canon 9, the Supreme Court has had something to say about that, but my reason for talking—I don't make it a practice of talking to clients represented by laywers, and my reason for talking to Mr. Leeman was I thought Mr. Quillen had a clear conflict of interest and could probably not advise Leeman as if just representing Leeman alone, that he was so heavily involved in the case, at least obviously with the representation of Beard, and I thought the possible representation of the Ethridges, that he could not advise Leeman that it might be in his best interest to talk to the United States Attorney's office, and the main thing I have regretted about talking to Mr. Leeman was simply the fact that I could not consult with Mr. Quillen.

If I told Mr. Quillen that Mr. Leeman might be interested in talking, then there would be no chance of Leeman [187] making any statement to the government. So that is the situation I found myself in with respect to talking to Leeman, and I don't usually make it a practice of talking to defendants who are represented by lawyers, but even if I did, there's nothing wrong with it, and there's no constitutional question involved concerning the Massiah case.

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[188] * * * * *

[189] * * * * *

Mr. MERRITT. Let me say this now. When I talked to Mr. Quillen about the case, he had made absolutely no statement to me about anything that had to do with what Beard told Quillen or what Quillen told him about Beard's case.

After I had the conversation on Friday with Mr. Quillen, Mr. Leeman called me on the telephone and said that he either had talked to Mr. Quillen or was about to talk to Mr. Quillen, and I said to him on the telephone, as far as I know, you haven't told me anything about anything Mr. Quillen has told you, and he said, no, that he hadn't. Then he said something about he had had conversations with—one or two conversations with Mr. Quillen in which Mr. Quillen asked him certain questions and wanted to get him to do certain things. I don't know what those questions are or what those things are that he wanted to get him to do.

The COURT. He didn't tell you?

Mr. MERRITT. No, sir, so I don't know.

The COURT. Did he tell you about any conversation between any of these other defendants and their respective [190] attorneys?

Mr. MERRITT. No, sir. No, sir.

And, may it please the Court, that is my position. The case hasn't been prejudiced in any way I know of. Plus the fact, I think if it had been prejudiced, it wouldn't make any difference. Here's a man who comes to the United States Attorney, calls him on the phone and wants to talk to him.

The COURT. Was this——

Mr. MERRITT. I might say——

The COURT. Was this original contact initiated by the government?

Mr. MERRITT. Well, I was going to say about that—I'm having to disclose a good deal of the government's, some of the government's case in saying this to the Court—the day that the indictment was returned against all of these defendants, a man testified before the grand jury by the name of Charles Bobo.

Charles Bobo, before and after he testified before the grand jury, told me that he and John Leeman were good friends. After he testified before the grand jury, he had told me that before he testified before the grand jury that he and John Leeman were good friends. After he testified before the grand jury, he came back into my office, and I told him, I'm going to be fair with you, Charles, you testified before the grand jury, but you have not testified to anything that [191] would damage your friend Sarge Leeman, but he's going to be indicted, we're asking the grand jury to indict him. I want you to know just as a matter of being fair with you, since you testified before the grand jury, that none of what you told the grand jury yourself has gotten your friend in trouble. And he said, well, my friend ought to come with me and do what I'm doing, and I said, if he wants to do that, I'll be glad to talk to him.

I must say to the Court that the thought had occurred to me that Leeman might want to be a witness—from what I knew about the case, the thought had occurred to me that Leeman might want to talk to me, because, number one, he was not as directly involved as some of the others. It's a classic situation.

Of course the Court has seen it a number of times. But I made no effort to send anybody out to get him to come in to see me or anything like that.

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[192–194]

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[195] * * *

Mr. QUILLEN. Another thing I might state to the Court, Mr. Leeman did come to me at one time and I can't remember the statement, and made the statement that Bobo—I assume it's the same Charles Bobo—had made the comment that he ought to make a deal with the government, and in the first place, I have not known in my experience here many deals being made in this type case, and secondly, I was looking at it from his standpoint, from his overall legal situation, not only as may respect this particular case, but some other matters, I was influenced in advising him not to talk at least at that time about matters that may not necessarily have a bearing on this particular case.

I think I gave him sound advice, and if I had it to do over again, under the same circumstances, I think I would give him the same advice.

The COURT. Well, if he could make a deal whereby the indictment was dismissed against him——

Mr. QUILLEN. If that message had been transmitted to me, if the Court please, I would certainly have told him about it.

The COURT. But you weren't in position to follow up really, were you, try to get a deal with the government yourself, or see what the deal would be?

Mr. QUILLEN. Frankly, I——

[196] The COURT. Because you represented Beard.

Mr. QUILLEN. If I had thought that such a deal could have been made, Leeman is charged——

The COURT. Well, I mean, suppose you would have thought that such a deal could have been made, could you have advised that it be made if you represented Beard?

Mr. QUILLEN. Yes, I could have withdrawn from Beard if there had been—if a conflict of interest had developed where—

and I had had knowledge of it, I would have brought it to the attention of the Court.

The COURT. Well, I assume you would have, but still at the same time, you were in a position of conflict between two clients there.

Mr. QUILLEN. Well, I didn't know it.

The COURT. Well, I mean, it's apparent on its face, that if he did make a deal, that it would prejudice Beard, wouldn't that be——

Mr. MERRITT. I might say, may it please the Court, here is a case decided by the 7th Circuit, July 19, 1967, United States v. Woolcoff, which is just about the same situation as this case, if the Court should find any difficulty with it.

The COURT. All right.

Mr. BINKLEY. Your Honor, if I might ask, you are not saying that there's no situation where a lawyer could [197] represent two defendants in a case. I think you could reason that Mr. Wilson couldn't represent the two people he's representing.

The COURT. No. I'm not saying that at all. In fact, it's been customary in this Court in many cases to appoint the same lawyer to represent two or three defendants jointly charged.

Mr. MERRITT. By the same token, you can't say that the United States Attorney acts improperly when a lawyer represents two or three defendants where in that situation he's got a conflict of interest for the United States Attorney to talk to one of them who wants to talk to him. That's the point. It's not improper for Bill Wilson or Dale Quillen to represent two or more defendants, but neither is it improper for the United States Attorney to talk to one.

Mr. BINKLEY. It seems to me that there's some duty owed to the Court as well as the other lawyers. When I was appointed in this case, this man was arraigned on the same day, and I have prepared my case to this point depending on this man being a defendant, and from what the United States Attorney has said, he was talking to this man some time after October the 1st, two weeks prior to the indictment.

The COURT. Prior to the indictment? You mean prior to the arraignment.

Mr. BINKLEY. I'm sorry, prior to the arraignment, [198] and the Court stated, I think probably through inadvertence, appointed Mr. Quillen to represent Leeman, and this just added to——

The COURT. That's in the order, but according to the transcript of the record it's surplusage, because he already represented him anyway.

Mr. BINKLEY. Well, in any event, to allow this thing to go on over a period of time, letting everyone think that Leeman was in fact a defendant and was in fact being represented by Mr. Quillen, certainly hampers preparation of the defense in this case.

Mr. MERRITT. I don't see how.

Mr. BATEMAN. It appears to me that the conflict of interest that Mr. Quillen had, or apparently had, was known at the time of the arraignment to the United States Attorney, but was not known to Mr. Quillen.

The COURT. Well, I don't know. He says that sometime along the line, that Leeman advised him that Bobo——what's this fellow's name?

Mr. QUILLEN. Bobo.

The COURT. That Bobo told you what was it?

Mr. QUILLEN. He told me that Bobo had suggested that he try to make a deal.

The COURT. Leeman told you that?

Mr. QUILLEN. Yes, sir.

[199] The COURT. That Bobo had suggested that he try to make a deal?

Mr. QUILLEN. Yes, sir.

The COURT. When did he make that statement? Do you have a date on that?

Mr. QUILLEN. No, sir, it was one of a good many visits to my office.

Mr. MERRITT. Let me just say why I didn't tell Mr. Quillen about it, the same reason—what's happened since I told him is the reason, because I knew just as soon as I told him what would happen. He would immediately call Mr. Wilson, and I was worried about Leeman—frankly, not concerned about these lawyers, they are doing their duty, I'm not accusing them of doing anything wrong—but they represent their clients, and they have got to tell their clients what happened, and I am concerned that Mr. Leeman is going to get killed, and I'm concerned very seriously.

One man has already gotten killed, and I have some information that threats have been made, and this, that and the other,

and the reason I didn't tell Mr. Quillen at that time was because I knew as soon as I told him, everybody was going to know about it, and all of the members of this gang were going to know about it, and the Court can appreciate Mr. Leeman's concern about his safety at this point.

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[200–202] * * * * *

[203] * * *

The COURT. Well, let's go from that premise. Let's suppose so. What has the government—what information has come to the government that in any way interferes with the confidential relationship between you and Beard or prejudices Beard's right to have your complete representation of his interests at the trial other than the fact that any testimony he may give might be prejudicial?

Of course that's inherent in the fact that he's turning state's evidence, if this is true, but just speaking of the attorney-client relationship alone, that aspect of it, how has that relationship been invaded?

Mr. QUILLEN. That's where I think I'm handicapped. If I start revealing the details——

[204] The COURT. You can't have it both ways. You've got to make a showing of prejudice.

Mr. QUILLEN. I think at this point, it would be clearly upon the government, the burden would be upon the government from one end to the other, that is through Charles Bobo, Leeman, Mr. Merritt, Mr. Knight, these two FBI agents who conducted numerous interviews with the defendant for them to satisfy Your Honor beyond any shadow of a doubt that it has not been—that Beard has not been prejudiced.

The COURT. When you say he's not been prejudiced, he will be prejudiced if this man testifies against him, unless you can convince the jury that Leeman's testimony is not entitled to credibility.

Let's define what we are talking about.

Mr. QUILLEN. All right.

The COURT. The issue would be whether or not the government has obtained the benefit of defense information; secrets, and strategy and so forth that would interfere with the confidential attorney-client relationship.

Mr. MERRITT. Not only that, but insinuated itself into the councils of the defense for that purpose.

The COURT. Yes.

Mr. MERRITT. This man hadn't told me anything about their defense. If he had come and told me something about their defense, if I hadn't put him in there for that [205] purpose, what Mr. Quillen may have told him about something else was a statement that Mr. Quillen made to him, it wouldn't—there's no attorney-client privilege there. The privilege is the client's privilege; the attorney doesn't have the privilege.

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[206] * * * * *

The COURT. I think we ought to get on the record just what happened so we can see if there has been any prejudice, interference with the right——

Mr. MERRITT. I can say by that that no statement was made to the FBI except I don't want to talk to you.

The COURT. Well, that part of it was all right.

Mr. KNIGHT. I think some other statements——

The COURT. What?

Mr. KNIGHT. Some additional general statements were made by Leeman at that time in which he said, I'm not involved in this, I don't really know anything about it, and then he made one or two general statements.

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[207–208] * * * * *

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Mr. MERRITT. Let me just say this too, all of these lawyers seem to think something is highly improper. This is not a civil case, may it please the Court. This is a criminal case, and the United States Attorney has some obligation outside its obligation to courtesy among lawyers, and that obligation in this instance seems to me far to outweigh just a matter of courtesy. You are talking to a man who feels his life is at stake.

Mr. BINKLEY. If it's just a matter of courtesy that we are discussing, I agree with the Attorney General, but it appears to me that there's a little more than courtesy involved when you are dealing with another lawyer's client.

The COURT. Well, I believe the inquiry that I am required to make and should make would be to satisfy myself that there has been no prejudice in the handling of the matter from the standpoint of this—of any defendant, any of these defendants being unable to get a fair trial because they did not—because their attorney-client relationship has been interfered with or invaded or infringed in the constitutional * * *

[210–213] * * * * *

[214] * * * * *

Mr. MERRITT. May it please the Court, the first interview, the first time Leeman was contacted by anyone was October 4, 1967.

The COURT. All right.

Mr. MERRITT. At which time he was contacted by Mr. Henderson Hillin, the FBI agent.

The COURT. How do you spell his last name?

Mr. MERRITT. H-i-l-l-i-n.

[215] * * * * *

Mr. MERRITT. The second time was October 10, 1967, at which time he was contacted by Mr. Henderson Hillin.

The third time was the next day, October the 11th, 1967, at which time he came to my office for the first time.

The fourth time was October 16, 1967, at which time he came to my office again and started giving the information at that time, October the 16th.

The fifth time was October 24th, 1967, at which time he was interviewed by Mr. Hillin.

And the sixth time was October 31, 1967, at which time he came to my office and was further interviewed in the presence of Mr. Hillin.

Now going back and recapping, summarizing just a minute, these meetings on October the 24th, it was a normal FBI interview. He went out—Mr. Hillin went out and asked him if he wanted to make any statement, and he made a few general statements, but that interview was more or less unproductive.

The COURT. What was the date of the indictment?

Mr. MERRITT. The 26th of September.

The COURT. All right.

Mr. MERRITT. Then the second interview on October the 10th by Mr. Hillin, at that time he said that he [216] wanted to talk to me, and then the next day he came up here and did talk to me. He didn't give any information. He just wanted to know what could be done for him.

Then October the 16th, he started giving the FBI and my office jointly information, and that continued on the 24th, and on the 31st.

The COURT. Now on any of these interviews, did you receive any information from him with respect to any conversations that had taken place between him and his attorney, Quillen?

Mr. MERRITT. I received the information only to the extent that I believe he told me Mr. Quillen told him not to talk to anybody, something of that sort. Mr. Quillen told him not to talk to the government about making any arrangement or anything like that.

I believe he told me that on the 16th, but he said that he didn't think that would be in effect, that he didn't think that was good advice, that he was going to tell the government what he knew about it.

He has never told me at any time, under any circumstances, and in any way whatsoever what any defense theory is, what the defense intends to do, what evidence they intend to offer, or anything that would bear upon the defense of the case.

The COURT. Is that applicable not alone to [217] Leeman's defense, but is it applicable also to Beard's defense?

Mr. MERRITT. Yes, sir, it is.

The COURT. Is it applicable to each and all of the other defendant's defense?

Mr. MERRITT. Yes, sir.

The COURT. That you got no information from him as to what any defendants' plans were or defense strategy?

Mr. MERRITT. No, sir, not in any way whatsoever.

The COURT. Did you get any information from him as to any communication that had taken place between Quillen and Beard in regard to these—in regard to the defense's case?

Mr. MERRITT. No, sir.

The COURT. Or any communication between any of the other defendants?

Mr. MERRITT. No, sir.

The COURT. And their respective counsel?

Mr. MERRITT. No, sir. Except for what I mentioned earlier after I talked to Mr. Quillen on Friday.

The COURT. This past week?

Mr. MERRITT. Yes, sir, we came into your chambers on Friday afternoon. After that, I talked to him on the telephone, and he said that—something to the effect about talking to Quillen about running down some information, something like that, but he didn't tell me what that was, and [218] I didn't ask him what it was.

The COURT. Let's see, for the record, what was last Friday? The 3rd, I believe, so the record will reflect this. It was on Friday, November the 3rd that Mr. Merritt and Mr. Quillen came to my chambers and for the first time laid this matter before the Court.

That's correct, isn't it?

Mr. MERRITT. Yes, sir.

The COURT. And at that time the Court stated that it would entertain any motions that Mr. Quillen or any of the parties had to make, in light of this information, at the time set for the hearing on the other pre-trial motions.

Is that substantially right, Mr. Quillen?

Mr. QUILLEN. Yes, sir.

The COURT. I believe Mr. Quillen stated himself he would like to think over the matter to see what his next move would be. That's substantially what occurred on Friday in this chambers.

All right. Now why did you conduct these interviews with Leeman without notifying either Mr. Quillen or the other attorneys or any one or all of them, without contacting the defense lawyers?

Mr. MERRITT. Well, of course, number one——

The COURT. I think that's all in the record. You made a statement to that.

[219] Mr. MERRITT. Yes, sir, With respect to all of the lawyers other than Mr. Quillen, so far as I know, they weren't representing Mr. Leeman and hadn't had any contact with him one way or the other. It didn't seem to me that there was any reason at all to contact them about it since they were not representing him and had nothing to do with it.

With respect to Mr. Quillen, the sole reason that I did not contact Mr. Quillen was because it appeared to me fairly clearly that he had a conflict of interest with respect to the

representation of Mr. Leeman, and Mr. Leeman apparently thought so.

At any rate, it seemed we had a conflict of interest, and that had I told him that Mr. Leeman wanted to come and see me and talk to me about the case, that he probably, in light of his situation, would have advised him not to do this, and would have tried to talk him out of it, and it didn't seem to me that, in light of the situation, that he could properly represent the interests of both Beard and Leeman, particularly with what—particularly since what information Leeman has was going to adversely reflect upon Beard, and of course he didn't start giving the information until the 16th of October, and did not really, fully disclose all the information I thought pertinent until the 31st, and it was the next day that I called Mr. Quillen's office, and he was at that time in Greeneville, Tennessee, trying a case [220] up there.

The COURT. He was where?

Mr. MERRITT. He was in Greeneville, Tennessee.

The COURT. You called Quillen's office?

Mr. QUILLEN. The note I got was Wednesday of last week. I believe you had called me on a Wednesday, and I didn't get the note until Friday.

Mr. MERRITT. It was the next day, I believe, that I called Mr. Quillen's office, and I left word that he was out of town, and I left word for him to get in touch with me as soon as possible.

The COURT. And he did get in touch with you on Friday?

Mr. MERRITT. Yes, sir, that's when he came back to town, and that's when we came in to see Your Honor.

The COURT. All right. Now is there any way that you could state to the Court whether or not the information which was conveyed to you by Leeman was information which he had acquired knowledge of independently of any information he may have received from Mr. Quillen, or was some of the information information that he could have known only by receiving it from Mr. Quillen?

Mr. MERRITT. Well, with the exception of one particular item, which I will disclose to the Court, he didn't give me any information which was not independent information.

[221] In the first place, I wasn't interested in any information that he couldn't testify to in Court, and after the interview on the 16th, we talked for just a minute after that, and

speculated about one or two strange things about the killing of Larry Ferguson on September 23rd, and I had some information that there may have been somebody up there in addition to people who have been charged—in addition to Mr. Quillen's client Beard, and the information was very hazy, something about a shotgun, and I asked him, I said, have you heard anything about there being a shotgun, and he said, seems like I've heard something about that, and that was all there was to it.

You would have to know this fellow Leeman before you—he's not the most glib fellow in the world. I mean he doesn't give you a lot of information that you don't ask about, and with the exception of that one particular item, that's the only information that he has given me that I know of that could have come from Mr. Quillen.

Mr. Quillen may know where that came from. He did not tell me that it came from Mr. Quillen. In fact, I asked him the question, do you know anything about anybody else being up there, and he says, seems like I've heard something about that.

The COURT. With that exception, are you in a position to state that the information which he conveyed to you was independent information that he knew of himself prior to [222] the filing of the indictment in this case?

Mr. MERRITT. Yes, sir. That is—now I don't know—I can't say absolutely positively that that's true, but all the information that I have, I've gone over the reports, each and every one of them, there's not a thing in those records or reports that he—he was present when it happened or was present when somebody other than Mr. Quillen made "X" statements to him, so I think I can answer that question that that's the only thing that I know of that he told me that could possibly have come from Mr. Quillen.

I don't know where that came from, because it would have—I don't know that it came from Mr. Quillen, because it came to law enforcement officers independently. I asked him the question. It had come through——

The COURT. Were any of these things that he said "X" person—any statement that "X" person made, were any of those made—did any of those purport to be statements that were made pending this litigation, while the attorney-client relationship existed, or were they statements that "X" person made in connection with the events charged in the indictment?

[223] * * * * * *

Mr. MERRITT. The answer to that is he has not reported to me any statement that I remember that anybody has said to him since the returning of the indictment. In other words, a party, what some party has said, party in any litigation has said to him.

The COURT. All right.

Mr. MERRITT. At least I don't remember any, and I might say to the Court that in these interviews that last some period of time, there are many, many things said, and so—but I don't remember anything significant.

The COURT. Well, have you received any information that derived or stemmed from the attorney-client relationship existing between Leeman and his attorney Quillen?

Mr. MERRITT. No, sir, not that I know of.

The COURT. Or from any information that stemmed or derived from the attorney-client relationship existing between Quillen and Beard?

Mr. MERRITT. No, sir, not that I know of.

The COURT. Or between other defendants and their respective counsel?

Mr. MERRITT. No, sir.

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[224-226] * * * * * *

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Mr. QUILLEN. Now what do you know, Mr. Merritt, if you will, please, state fully about such counselling as Mr. Leeman may have had with Charles Bobo, or what inducement Mr. Bobo, what he might have said to Mr. Leeman to induce him to come here and make a statement.

Mr. MERRITT. I don't know anything about what Mr. Bobo would have said to Mr. Leeman about that. I mean he was not authorized by the government to make any statement at all to Leeman as any agent of the government.

He said—I have already said earlier today he told me that he and Leeman were good friends, and that he thought Leeman ought to do the same thing he was doing, he ought to come up and tell the story, and I said if he wants to do that, I'll be glad to talk to him.

Mr. QUILLEN. Can you state whether or not Bobo is an unnamed co-conspirator in this case?

Mr. MERRITT. No, he is not.

[228] . . . . . .

Mr. QUILLEN. You are not stating unequivocally that he is not?

Mr. MERRITT. No, so far as I know, he is not.

. . . . . .

Mr. MERRITT. No, sir, he just told me that he had said something to you about talking to the United States Attorney or it might be in his best interest to talk to the United States Attorney, or the FBI, or to the government; and that you told him not to do that, that it wouldn't be in his best interest.

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[229–241] . . . . . .

[242] . . . . . .

Mr. MERRITT. Can I ask Mr. Quillen about that, because he told me on the phone last night that Mr. Quillen had told him to tell me about it.

Mr. QUILLEN. Tell you about what, Gilbert?

Mr. MERRITT. About Self's—where Self was on the night of the killing. He called me last night to tell me what he knew about it.

Mr. BATEMAN. How did he purport to know what he knew?

Mr. MERRITT. Well, Mr. Bateman, I'm not going to divulge the whole case here now unless the Court requires me to.

The COURT. No, this has to be confined to this one inquiry whether or not the right to counsel has been [243] denied or interfered with.

Mr. BATEMAN. Nothing further.

The COURT. Effective representation of counsel.

Mr. BINKLEY. I'd like to ask a question if I may.

Mr. Merritt, as I understand, the first time you talked to Leeman was on the 11th of October, is that right?

Mr. MERRITT. That's correct.

Mr. BINKLEY. At that time did he advise you that he was still conferring with Mr. Quillen concerning his defense?

Mr. MERRITT. On the 11th? I don't remember that anything was said about it one way or the other, other than Mr. Quillen represented him.

Mr. BINKLEY. Did you give him any directions or advice as to how he was to deal with Mr. Quillen after you started talking to him?

Mr. MERRITT. No, I didn't. I'm sure that I did not, because as I recall, he asked me what he should do, and I specifically—I remember specifically telling him that I wasn't going to make any suggestion to him about that one way or the other.

Mr. BINKLEY. All right. Let me ask, did you call Mr. Quillen on the first of November? Was that after—[244] did you receive a written statement from Leeman prior to calling Mr. Quillen?

Mr. MERRITT. Yes.

The COURT. And when did he make this statement?

Mr. MERRITT. You mean a written and a signed statement?

Mr. BINKLEY. Yes.

Mr. MERRITT. No. He made statements two or three times, those dates I've already given to the Court, the 16th, the 24th, the 31st.

Mr. BINKLEY. But at the time you called Mr. Quillen, you were satisfied with his statement?

Mr. MERRITT. Yes. I might say that, Mr. Binkley, you know in your representation of these kind of fellows, you're never absolutely certain whether you are getting the truth or you are not getting the truth, so I can't be as sure about that as I could be about something you told me, but I felt like I was——

Mr. BINKLEY. But at least you felt like you had gone as far as you could go with him?

Mr. MERRITT. Well, I felt like I had gone a good ways and that anything else, that he was going to stand up and be a witness, I hadn't gone—I wouldn't say I had gone as far as I intended to go, because once I—we put him on the stand, there will be a whole lot of details that we [245] would have to go over with him, preparing him for—to be a witness.

Mr. BINKLEY. All right.

Mr. QUILLEN. One thing further, Mr. Merritt, has there been any follow-up investigation pursuing leads of the information given to you by Mr. Leeman?

Mr. MERRITT. No, I don't recall any at all.

[246] . . . . . .

[247] . . . . . .

HENDERSON HILLIN, JR., a witness called to testify concerning the matters under consideration, after having first been duly sworn, was examined, and testified as follows:

EXAMINATION

By The Court:

Q. State your name for the record.

A. Henderson Hillin, Jr.

Q. And what is your position?

A. Special Agent for the Federal Bureau of Investigation.

. . . . . .

[248] Q. You have had occasion to work on this particular case that we are concerned with here, the United States v. Gary Lee Ethridge and others?

A. Yes, sir.

Q. When was your first contact with the defendant Leeman in this case, if you made contact with him?

A. Your Honor, I fingerprinted him on the day he surrendered; I saw him briefly in the Marshal's office, but I did not interview him, on September the 26th. Then I went to his home on October 4th, talked with him there. That was my—I guess my initial interview with him.

Q. All right, what—did you make any statement to him about his rights to counsel?

A. Yes, sir. I advised him of his constitutional rights and furnished him with a waiver of rights form.

Q. Did he make any statement to you at all on that occasion?

A. Yes, sir, he furnished some information.

Q. Did he sign a waiver of rights?

A. He looked at it and indicated that he understood it, but he did not desire to sign it.

Q. Well, did he make—did he say that he was willing to make a statement?

A. He indicated that he had some things that he wanted to say, that he had been advised by his attorney not to [249] be interviewed, but that he had some things he wanted to say and wanted certain questions put to him.

Q. Well, did you examine with respect to those things?

A. Yes, sir, I asked him about the bank robbery of the Bordeaux Bank.

Q. This was after full statement to him of his rights?

A. Yes, sir.

Q. To counsel?

A. Yes, sir.

Q. And he stated, I believe, from your testimony, that he did want to make—certain statements about certain things, even though his lawyer had told him not to?

A. That is correct, sir.

Q. Was that in writing? Did you take a written statement?

A. No, sir, I did not.

Q. Now on October the 4th, is that when that was?

A. Yes, sir.

Q. On October 10th, did you have another interview with him?

A. Yes, sir.

Q. Did you have any between the 4th and the 10th?

A. No, sir, that was the next contact.

[250] Q. All right.

A. Special Agent Darrell, D-a-r-r-e-l-l, Hamar, H-a-m-a-r——

Q. Hamar?

A. Yes, sir.

Q. All right, go ahead.

A. Went to Leeman's home, and again attempted to interview him, furnished him with a waiver of rights and rights form which he read, but did not desire to sign, and attempted to interview him on that date.

A. No, sir, he did not.

Q. He made no further statement about any——

A. Yes, sir, he indicated that he did not know whether or not he should be talking with us, he was under indictment for a very serious charge, and that anything he might say might put him in the penitentiary, and he inquired as to who was prosecuting, and he was informed that the prosecution in this case was being handled by the United States Attorney. I indicated that he might want to talk to the United States Attorney.

Q. Now did you see him next on October the 24th? That's the record I have here. I'm not sure if that's correct or not.

A. I think I saw him on the 16th, Your Honor.

Q. On the 16th. In Mr. Merritt's office?

[251] A. Yes, sir.

Q. Was he interviewed—did he make a statement then?

A. Yes, sir, he did.

Q. Did he give some information?

A. Yes, sir.

Q. And on October the 24th, was that the next occasion?

A. Yes, sir.

Q. Now the 16th, was that the next occasion after the 10th?

A. After the 10th, yes, sir.

Q. And there was no occasion in between?

A. No, sir.

Q. Then on the 16th, you were present in Mr. Merritt's office when he gave some information?

A. That is correct, sir.

Q. On October the 24th, according to my notes, was the next date, is that correct?

A. That's correct, sir.

Q. Where did you interview him?

A. We interviewed him in a Bureau automobile at McCabe Park, and the adjacent area, Special Agent Francis Norwood and I.

Q. Norwood. Did he make a statement then?

[252] A. Yes, sir, he furnished information at that time.

Q. Was this statement in writing?

A. No, sir, it was not. It was an oral statement.

Q. Up to this point, had he given any written statement at all, a statement that he signed?

A. No, sir, he has not.

Q. I mean up to October the 24th, he had given no written statement?

A. No written statement.

Q. No signed statement?

A. No.

Q. On October the 31st, did you interview him in Mr. Merritt's office?

A. I was present in Mr. Merritt's office.

Q. Did he give further information on that date?

A. That is correct, sir; he did.

Q. Was there any interview in between the 24th and the 31st?

A. No, sir.

Q. Have you interviewed him since the 31st?

A. No, sir, I have not.

Q. Now did you make a resume or summary of the various statements that he made on these different dates?

A. Yes, sir, I did.

Q. And that is in writing?

[253] A. Yes, sir.

Q. I'm not asking you to produce that, but I will want to look at those later, but does that apply to each and all of the interviews that I've just mentioned?

A. All except the October 31st.

Q. October 31st, you made no resume of that?

A. I made no contemporaneous recording of that since I sat in on an interview at that time.

The COURT. Do you have a resume of that, Mr. Merritt?

Mr. MERRITT. No, sir.

By the COURT:

Q. Now, let's see. On any of these interviews, you knew he was represented, I assume, at the time these interviews took place, was represented by an attorney?

A. Yes, sir, I certainly did.

Q. Mr. Quillen?

A. Yes, sir.

Q. Did you at any time ask him to give you statements in regard to any transactions or conversations that had occurred between him and Mr. Quillen?

A. No, sir, I did not.

Q. Did he at any time state to you anything that Mr. Quillen had told him?

A. No, sir, he—during the interview on October [254] 24th, when we were near McCabe Park, Mr. Quillen had driven by at about that time or shortly before this, and—Mr. Quillen drove through the area, and he brought up Mr. Quillen's name at the time and mentioned something about him, and I recall specifically cautioning him that I was not interested in his relationship with Mr. Quillen.

Q. All right. Now let's see, did he at any time convey to you any conversations or transactions that had occurred between any of these other defendants in this case and their respective counsel or attorneys?

A. No, sir.

Q. State, if you can, whether or not any of the information that he conveyed to you was information which Leeman had acquired knowledge of as a result of the attorney-client relationship existing between him and Mr. Quillen.

A. No, sir, his information to us had to do with his relationship with the defendant Gary Lee Ethridge and other defendants in the case and his involvement in the matter.

Q. Was that pre-existing——

A. Pre-existing.

Q. (Continuing.) Conduct and transactions and conversations and so forth?

A. Yes, sir.

Q. That is pre-existing the indictment?

[255] A. That's correct, sir.

Q. Now let's see if I have any other questions. You fingerprinted him on the 26th, I believe?

A. Yes, sir, I fingerprinted him.

Q. And then that same day——

A. Mr. Quillen was present at the time and made an objection to the fingerprinting that I was doing at the time.

Q. You did not talk to him on that day or you did not——

A. I spoke to him, but I did not attempt to interview him or anything like that.

Q. You didn't get any statement from him?

A. No, sir.

Q. All right.

The COURT. Anyone else want to ask him any questions?

Mr. Quillen?

By Mr. QUILLEN:

Q. Mr. Hillin, in your first contact with Mr. Leeman following the fingerprinting, on October the 4th, where did that contact occur?

A. That occurred in his residence on Sentinel.

Q. Did you go there of your own motion, or had he invited you to come?

[256] A. He had not invited me; I went there on my own.

Q. Who was with you?

A. I was alone at the time.

Q. And how long did that interview last?

A. Well, there was a gentleman there by the name of Perry Patten. I talked with Patten first, and then he left, and I talked with Leeman. I wouldn't be—I'm not exactly sure of the

length of the interview, but I would say somewhere around forty-five minutes to an hour, somewhere in that vicinity.

Q. Is Perry Patten also a witness in this case?

A. Yes, sir.

Q. Now what were the questions that you asked of Mr. Leeman that day?

A. What were the questions?

Q. Yes.

Mr. MERRITT. I object to that.

The COURT. Yes, I'll examine the resume of his—showing the results of his interview, and I'll decide what to do after that.

Mr. QUILLEN. Well, of course, I take it Your Honor would rule the same as to all of the interviews.

The COURT. All of them.

Mr. QUILLEN. I would ask him about all of the interviews.

[257] The COURT. Of course he has no resume at all of the October 31st interview.

By Mr. QUILLEN:

Q. Was October 31st the day that you saw me over at the McCabe golf course?

A. No, sir, it was not.

Q. What day was that?

A. That was the 24th.

Q. 24th?

* * * * *

Q. Did you have any conversation with him on that day pertaining to any alleged involvement on his part with the Savings and Loan Association?

A. No, sir, he volunteered—he said something——

Mr. MERRITT. I object to that; are you talking about another bank robbery?

The COURT. Sustained.

Mr. QUILLEN. My reason for stating this, Mr. Leeman came to my office, and I had been looking for him, and he came to my office and told me that he had been talking—while I was there, he was talking with some FBI agents who were interviewing him about some involvement or possible involvement in a savings and [258] loan association robbery, and what I'm trying to find out, if Your Honor please, is whether or not he was telling me the truth or misleading me.

The COURT. Maybe he did; I don't know.

Mr. MERRITT. I don't see what relevance it would have.

Mr. QUILLEN. That is what he said the conversation was about.

By Mr. QUILLEN:

Q. State whether or not you were talking to him about——

A. No, sir, we didn't question him about any savings and loan. He brought it up, have you been looking for me for the savings and loan, something happened the day before, somethings like that. It was a casual remark of his, and we didn't pursue it.

Q. Mr. Hillin, you have been furnished a resume of the statements that Mr. Leeman made to Mr. Merritt, have you not?

A. No, sir, I have not seen these. I have prepared statements, contemporaneous statements, based on interviews with him.

Q. Now has there been any follow-up investigation on your part or on the part of any other agent working with you on this case pursuant to information that he gave you?

[259] A. What specific information, Mr. Quillen?

Q. Any information that Mr. Leeman has given you about this conspiracy. Has there been any follow-up investigation resulting from that information?

A. Yes, sir, there has.

Q. Does that information or does that investigation pertain to the defendant William Eugene Beard?

A. No, sir. What I had in mind had to do with Perry Patten. He had Leeman—he told up——

Q. That's another——

A. He's a witness.

The COURT. He's not a party?

Mr. HILLIN. No, sir.

The COURT. Well, do you want that, Mr. Quillen?

Mr. WILSON. Yes.

Mr. QUILLEN. Patten's a client too; he's not indicted.

By Mr. QUILLEN:

Q. Has there been any follow-up in regard to the defendant Beard?

A. Leeman doesn't know anything about Beard's alleged involvement in the murder investigation.

Q. You are stating that of course, Mr. Hillin, as a conclusion of your own, is that correct?

A. (The witness nods.)

[260] Q. Is your answer yes?

A. Yes, sir. He was not in on any of the——

Q. Now at the time you first approached Mr. Leeman on October the 4th, did you state to him at that time that he might be in a position to obtain some favors for his statement or for his testimony?

A. No, sir.

Q. Did you at any time suggest that to him?

A. No, sir.

Q. In connection with this investigation, have you dealt directly with a man by the name of Charles Bobo?

A. I've never interviewed Bobo; I've been present at an interview where he was present, but I've never interviewed him.

Q. Do you know anything about persuasion on the part of Charles Bobo to get Leeman to give testimony?

A. Would you repeat that?

Q. Do you know anything about Charles Bobo as it may pertain to any persuasion on his part to influence Leeman to make these statements to you?

A. I understand that Bobo is a close personal friend of Leeman. Leeman has advised us that he is a close personal friend, but I've never been present at any time when any discussions of what you are talking about have been conducted.

[261] Q. Have you been present when anyone attempted to encourage Bobo to get Leeman to make these statements?

A. Just during these interviews and Bobo was present and Bobo would interject a thought here and there, but I've never heard anyone tell Bobo or Leeman that this or that is going to happen.

Q. Has Bobo been present when Leeman was interviewed by you?

A. Yes.

Q. And has Bobo encouraged him to do this, do you know that?

A. I would say that he was in agreement with what he was doing. I wouldn't know how you would mean encourage him, because I'm not a close personal friend of either one of them.

Q. Now is Bobo a paid government informer?

A. No, sir, not to my knowledge.

Q. Do you know whether or not he has received any assistance in his troubles from the federal government for the services rendered to you in this case?

A. Would you repeat that?

Q. Do you know whether or not Charles Bobo has received any assistance from the federal government in connection with any cases he may have elsewhere in return for his assistance to you in this case?

[262] A. I've never had a discussion with Bobo. He doesn't like the FBI, and doesn't want to talk with us.

Q. Have you had any discussion with John Leeman about the killing of James Larry Ferguson?

A. I've asked him about it; he doesn't know anything about it.

Q. He tells you he doesn't know anything about it?

A. When I say that, this is what——

Q. Have you had any discussion with him about the theory of someone, of a shotgun having been used in connection with the killing of James Ferguson?

A. Leeman has indicated on at least two occasions that he doesn't know anything about the killing of James Larry Ferguson, that he wasn't present. He does—did say that Perry Patten, which I've been pursuing, one of the witnesses in this case, had been asked to give an alibi in this case for Ethridge, and that he thinks that eventually Patten will tell the truth about Ethridge's activities on that night.

Q. Who is this who said that?

A. This is Perry Patten.

Mr. MERRITT. He's just a witness.

By Mr. QUILLEN:

Q. Was it said they thought——

A. We have been attempting to get this information from Patten, and as you know, we were attempting to interview [263] Patten when he called you and you indicated he didn't want to talk to us.

* * * * * *

Q. And did you know the morning you went out to interview him that he had come to my home that night to talk to——

A. No, sir, he didn't tell us that he had.

Q. And did he tell you that I had advised him not to make any statement to you?

A. That's right. And we told him, of course, any time he wanted us to leave the premises, we certainly would.

Q. And you and I had a discussion on the morning following, about eight-thirty in the morning, for some ten or fifteen minutes?

A. That's right, over the telephone.

The COURT. Now that's what date?

Mr. HILLIN. Your Honor, I don't have the date.

The COURT. This is after you talked with [264] Leeman?

Mr. HILLIN. Yes, sir.

The COURT. The following morning you had a talk with Mr. QUILLEN?

Mr. HILLIN. I'm not sure of the date. Could I refer to some notes here?

Mr. QUILLEN. I'm offering this for the purpose of showing the tactics of the Federal Bureau of Investigation here.

The COURT. That's going to come up in connection with another motion, isn't it?

Mr. QUILLEN. I think it has a bearing on this particular case.

Mr. HILLIN. That was on October the 27th, Your Honor.

By Mr. QUILLEN:

Q. Now at that time, Mr. Hillin, we had about a fifteen minute discussion. What was that about? What did it pertain to?

A. We received information, if Your Honor please, that Perry Patten had some information as to the whereabouts of one of the defendants or possibly more than one, maybe, on the night of the Ferguson murder, and we were trying to pin this information down and wanted to find what Patten's activities were, and if he had seen Gary Lee Ethridge on that [265] night. We were attempting to interview him about this, and this is what this discussion ensued from.

Q. Now did you, did Mr. Patten tell you when you went there that morning that he had talked with me?

A. No, sir, he didn't say he had talked with you. He called you on the telephone.

Q. And were you trying to interview him about a matter that you had gotten your lead from Mr. Leeman?

A. Yes, sir, we wanted to interview him if he knew anything about the whereabouts of Gary Ethridge on the morning of the murder.

Q. And that, of course—your interview of Mr. Patten was at the suggestion of Mr. Leeman?

A. It was a logical step, because he was living in Ethridge's house, but it was brought about, I would say, through conversation with Leeman that someone was trying to get Patten to give an alibi for the time.

Q. But this particular interview was directed toward the murder aspect of this indictment?

A. That's what we were attempting to do, but we got nowhere with it.

Q. You remained there for some ten or fifteen minutes, and Mr. Patten was asking you to leave the place?

A. No, he was not, we told him that if he asked us to leave—you were asking us to leave.

[266] Q. Did I explain to you, Mr. Hillin, that he didn't want to be rude, but he had told me that he didn't want to make a statement?

A. Yes, sir, and we told him that if you want us to leave, we'll leave. Of course it was his premises, not yours.

Q. I told you I was advising that it might not be in his best interest to make a statement?

A. That's correct, sir.

Q. And you had also told me that he was probably involved?

A. I told you as an officer of the Court, I thought you had an obligation for him to give this information to us.

Q. Did I not explain to you that the boy had a hard time expressing himself?

A. Yes, sir, you certainly did.

Q. And he was authorizing me to speak for him, is that right?

A. I don't remember the point about him authorizing you to speak for him.

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By Mr. QUILLEN:

Q. How long, Mr. Hillin, did you remain there after I hung up the phone?

A. A very short time. Mr. Norwood explained to him what the purpose of our interview was and what we wanted, and the fact that we wanted his cooperation, and any information he had, and he indicated that he would think about it and would be—might be in contact with us.

Q. Now when you did leave, did you just go to the street and remain there for some little time?

A. No, sir, we left.

Q. Do you know where he went from there?

A. No, sir, I didn't keep up with him after that.

Q. He was there in his home——

* * * * * * *

[268] * * *

By Mr. QUILLEN:

Q. I would like for you to expound a little bit, Mr. Hillin, if you can, why it was that you told Mr. Leeman that you were not interested in his relationship with me.

A. Because I had had experience during the Hoffa trial and was aware of the confidential nature of the attorney-client and I didn't want to infringe on that area. He mentioned—he brought up your name, and I was very careful to explain that we were not interested in any trial strategy or confidential information.

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[269–271]

[272]

By Mr. BINKLEY:

Q. Mr. Hillin, I believe you stated the first contact you had was when you fingerprinted him on the 26th?

A. Yes.

Q. Had you been assigned the investigation of this particular witness prior to that time?

A. I've had overall responsibility for this entire case since April, and it fell my duty, there was another bank robbery that day, and it fell my duty to see that these people were fingerprinted and processed.

Q. Were you present at the time the bond was set for Leeman?

[273] A. No, sir, I wasn't there.

[274]

By Mr. MERRITT:

Q. The reason for your interview of Perry Patten was because Leeman told you that Patten had told him they were trying to get into a lie about Ethridge's presence that evening, is that correct?

A. Yes, sir.

By Mr. BINKLEY:

Q. Mr. Hillin, had you—who made the determination [275] is such a determination was made, that Leeman may be a witness, or a defendant that you could get to turn state's evidence?

A. I don't know if there was any formal determination made. In any investigation of this type, where you have a number of defendants, you always analyze the information and go after the person that you think would probably be more susceptible or the weakest link in the chain.

Q. Well, when you started——

A. Or less involved, I should say.

Q. When you started working on Leeman, was this your own idea, or something that had been planned——

A. When you investigate, you take all the information you can get, and then analyze it, and as far as any particular person, you gather all the information you can and attempt to develop the information.

The COURT. You had overall charge of this investigation, did you, Mr. Hillin?

Mr. HILLIN. Yes, sir.

The COURT. What agents have worked on the case from time to time?

Mr. HILLIN. Everyone in our office from time to time, Your Honor.

The COURT. What other agents have either interviewed Leeman or been present when he was inter-[276]viewed besides yourself?

Mr. HILLIN. Francis W. Norwood.

The COURT. Norwood.

Mr. HILLIN. Yes, sir. Darrell Hamar. If Your Honor please, I believe those are the only two other agents who were present.

The COURT. Now I think the thing to do, I'll just have to adjourn now because I've got another appointment, will be to ask that you furnish me all of these statements, your résumés or whatever you call them, of interviews, and then I think you should reduce to writing, Mr. Merritt, the interview of the 31st, October the 31st, make a summary of that, and pass that to me, and then we will proceed the first thing in the morning with these other motions, and after I have had a chance to consider these other motions and to get deeper into the case, then I'll decide where we go from there.

I may call these other two FBI men in and let them testify and then, of course, I may have other ideas after I read these statements that were taken. There are several alternatives there.

I can order that they be turned over to you for examination, or I could refuse that, or have further hearing to hear these two additional witnesses. I [277] suppose that would be in chambers too, if we had further hearing, with Norwood and Hamar. They will be available, I suppose?

Mr. HILLIN. Yes, sir.

The COURT. But tomorrow morning at nine o'clock now, let's get here promptly, and try to get rid of the motions tomorrow one way or the other.

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[278–291]

[292] November 7, 1967

The COURT. Now are all the parties present this morning? Mr. Wilson?

Mr. QUILLEN. Everybody except Mr. Leeman, if Your Honor please.

The COURT. All the other defendants are present and their respective attorneys. Let the record so show.

Now I'm not sure, but has the government made a formal motion to sever this case as to Leeman?

Mr. MERRITT. No, sir, but if it is in order, the government will make such a motion orally at this time on the grounds that Mr. Leeman will be a witness for the government in this case, and follow that as soon as possible with a written motion.

The COURT. All right, the motion will be granted, and Mr. Quillen, you will be relieved of any responsibility to represent the defendant Leeman.

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[293–322]

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[323]

Mr. BINKLEY. May it please Your Honor, I would like to be heard on this number eight.

The COURT. Number eight, overt act?

Mr. BINKLEY. If the first count, this overt act—I didn't understand Your Honor as to why this count four was taken out. I don't know whether that was on my motion or Mr. Quillen's motion. My motion was to remove this count on the ground that it would be so prejudicial to my client to show that he was incarcerated in the penitentiary and had escaped from confinement, and if that is the reason for removing this count four, then it appears to me that it would be inconsistent to leave count eight—I'm sorry, number eight of count one, this overt act, in, because I think the government, in trying to prove a conspiracy to rob banks, that any value that this portion could have toward their proving conspiracy would be far outweighed by the detrimental effect of informing this jury that my client is in the penitentiary, and I just can't—I think this is so prejudicial to my client for the government to be able to show something to the jury that they couldn't otherwise show, that this should be stricken, and that proof on this shouldn't be allowed.

Mr. MERRITT. May it please the Court, I might [324] say in that respect that we cannot put on proof without it coming out that Mr. Bostic escaped from the penitentiary. A number of the witnesses knew Mr. Bostic as a part of this conspiracy as a man who had just escaped from the penitentiary as part of the identity of the man, and I'm sorry that it's prejudicial that he has just escaped from the penitentiary, but where it's a part of the conspiracy, a man escapes from the penitentiary is immediately picked up by the conspirators and made a part of the conspiracy, and it is necessary to identify the man by the wit-

nesses as the conspirator who had just escaped from the penitentiary. I'm sorry it's prejudicial, but I did not create that situation.

Mr. BINKLEY. If Your Honor please, I fail to see why the government has to identify a man as the person who just escaped from the penitentiary. It looks like to me that the only good to come from that could be—would be to prejudice the minds of the jury. They can say the short fellow with the black hair and identify him. I can't see that it's necessary in the prosecution of a criminal trial to identify a man by saying he's the man who just escaped from the penitentiary.

Now that is completely unreasonable to me. I don't see how that could do any good except to prejudice the minds of the jury.

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[325]

The COURT. If this is a part—let's go back to the indictment. What is the purpose of the conspiracy? What is the purpose as alleged in count one?

Mr. MERRITT. The purpose is to charge the [326] defendants with conspiring to commit the offense of robbing banks, national banks, in the Middle District of Tennessee under conspiracy sections 371, and the substantive offenses are the offenses in section 2113 of Title 18, that's the bank robbery statute.

Now let me, if I may, make the issue a good deal simpler, I think, if you have a situation where conspirators who are robbing banks go to the penitentiary and force a man out of the penitentiary, fix it up so he can escape for the purpose of going ahead and robbing some more banks, because this man is a specialist in some aspect of bank robbery, and you allege that as an overt act in the conspiracy, why obviously this is good.

Well, this is the same thing we are alleging right here, this man escaped from the penitentiary, and immediately joined this group of conspirators and proceeded to start robbing banks with them, being concealed by a member of the conspiracy as a part of the conspiracy.

Mr. BINKLEY. If Your Honor please, I voice my same objections. There is only one person involved here who is alleged

to have harbored this man, and in spite of the arguments of the government, I still say, from what's been said, no purpose other than to prejudice the jury by the knowledge of the fact a man's been in the penitentiary and is presently there, and I don't care what Your Honor is able [327] to charge the jury, you still aren't going to remove that from their minds and I don't think the government has sufficiently shown this is such an integral part of their case that it can't be left out, and from what's been said, I feel that the only purpose for having this in is to prejudice my client, and I think it's objectionable.

Mr. MERRITT. That's not true, if he were just in the penitentiary, what he says is true. We wouldn't be bringing out that he was just in the penitentiary. What we are bringing out is that he escaped from the penitentiary.

The COURT. For the purpose——

Mr. MERRITT. For the purpose and to join this group of conspirators and did immediately join them and proceeded to start robbing banks, and was a fugitive from justice being harbored by them as a part of the conspiracy.

Mr. BINKLEY. The escape occurred on April the 11th and it's certainly not charged in this conspiracy that an escape from confinement was any part of a conspiracy to rob banks. The only time this is charged, and the only time this was mentioned is number eight, where it says Eugene Beard harbored and concealed Herman Bostic, and I submit that we have the same situation that the purpose of this was to prejudice the minds of the jury.

The COURT. Suppose it wasn't charged at all as an overt act, wouldn't it nevertheless be competent testi-[328]mony if it was a part of the conspiracy to prove that he did escape for the purpose of further engaging in robbing the bank? In other words, you don't have to allege every overt act.

[329–330] * * * * * * * * * *

[331] * * *

The COURT. Well, I'll take these motions under advisement. I think I have the theories of the parties.

[332–337] * * * * * * * * * *

[338] * * *

The COURT. That would be number thirteen, reserved for the hearing.

Now number sixteen is change of venue, that's a matter we'll take up later.

The next one is—let's see, what, twenty and twenty-one—number twenty alleges that the defendant has been deprived of counsel at all critical stages. The government has sought to obtain incriminating evidence by having other prisoners in the Wilson County jail engage in conversation with the defendant about his case, defendant was moved from Lebanon to Carthage without notice to his attorney.

All right. Now do you have any proof to offer in support of that position?

Mr. QUILLEN. Of course, if the Court please, I don't have any proof about—at this time about what may have happened in the jail at Wilson County. I had information to that effect when I made that motion, but Your Honor will excuse me, it's again the element of time. I just haven't had the opportunity to pursue that aspect of it.

Mr. MERRITT. The sheriff of Wilson County who runs that jail is here.

The COURT. He is here today.

Mr. QUILLEN. Well, I think by tomorrow I'll have some independent information about it. I talked with [339] Mr.——

Mr. MERRITT. Well, he can put the United States Attorney on the stand and the FBI if he wants to to ask them about whether they have gotten some prisoner up there to try to sneak around and get some information out of Beard.

The COURT. Yes, sir, do you want to do that?

Mr. QUILLEN. Yes, sir, I would prefer, if I may pass this aspect——

The COURT. You say you have had no opportunity to investigate, what would there be to investigate unless you had some indication that——

Mr. QUILLEN. Well, I received information that——

The COURT. Do you have any reason to believe that the government has actually contacted prisoners to try to use them as spies and extract information from Beard?

Mr. QUILLEN. I have reason to believe that it was done by the sheriff of Wilson County.

Mr. MERRITT. Well, he's here, let's call him and put him on the stand.

Mr. QUILLEN. I don't wish to be precluded from producing such other evidence as I may have available tomorrow on it.

The COURT. Well, we will have to wind this up today.

[340] Mr. MERRITT. We were going to get through today, it's been set today.

The COURT. We are going to finish today.

Mr. MERRITT. Does Mr. Quillen—let me ask, you don't wish to put on any proof about this today?

The COURT. He says he's not prepared. He has no proof. You say you have an indication that that occurred?

Mr. QUILLEN. I have information that this occurred from a member of the Wilson County Bar, and I believe him.

The COURT. Is he prepared to testify for you?

Mr. QUILLEN. That's Mr. Lowery.

The COURT. And I appointed him to represent Beard. Is he here?

Mr. QUILLEN. Yes, sir, he had another case set tomorrow; he will be available next week, and——

The COURT. And he's prepared to testify?

Mr. QUILLEN. I don't know that he's prepared to testify; he gave me this information. I don't know what his source was.

The COURT. Well, let's put the sheriff of the county—he purports to tie this into the sheriff, does he?

Mr. QUILLEN. Well, it ties it into his jail, of course; he's absolute custodian.

Mr. MERRITT. Well, there are some other [341] allegations in here about the Federal Bureau of Investigation, and the United States Attorney, and all kinds of terrible things we've done. Am I to understand that you don't want to put on any proof about those allegations?

Mr. QUILLEN. I'll call Mr. Hillin about it.

The COURT. All right, let the sheriff come forward and take the stand.

CLARENCE HANKINS a witness called to testify pertaining to the motion, after having first been duly sworn, was examined, and testified as follows:

EXAMINATION

By the COURT:

Q. You are the sheriff of what county?

A. Wilson County.

Q. How long have you been sheriff?

A. Fifteen months.

Q. As such, do you have custody and control of the jail over there at the county?

A. Yes, sir.

Q. Have you had the defendant in this case, William Eugene Beard, in custody?

A. Yes, sir.

Q. For how long a period?

[342] A. Well, let's see, three or four—three weeks, three or four, something like that.

Q. Do you have him there now?

A. No, sir, he's in Carthage.

Q. When was he moved to Carthage?

A. He's been gone for two or three weeks.

Q. State whether or not while he was there, you made any effort to have other prisoners who were in the jail at the same time to contact Beard for the purpose of getting information from him about this case?

A. No, sir, did not.

Q. Did any of his co-prisoners ever come to you and convey information to you as to what he had said in the jail?

A. No, sir, I don't think Mr. Beard has ever said anything to anybody up there, because he's very new to me. I've talked to him a few times.

Mr. QUILLEN. I don't understand him.

By the COURT:

Q. Repeat that.

A. I don't think Mr. Beard told anybody anything while he was in prison up there.

Q. Who has immediate charge of the jail under you?

A. Well, I see after it.

Q. You see after it. Don't you have a person you [343] call a jailer?

A. Yes, sir. Well, yes, use the trusties to help out some.

Q. Trusties?

A. Yes, sir.

Q. Have any of them contacted the fellow prisoners to get them to seek information?

A. As far as I know, no, sir.

Q. Have they ever told you that they have?

A. No, sir.

Q. Have you ever heard of that taking place in the jail in any way?

A. No, sir.

Q. Have you heard any rumor to the effect that has been circulating around the area of Wilson County that fellow prisoners were trying to get information out of Beard?

A. No, sir.

Q. To incriminate him?

A. No, sir.

Q. All right.

The COURT. Any questions you want to ask? What's this attorney's name over there?

Mr. QUILLEN. Mr. Lowery.

By the COURT:

Q. Do you know Mr. Lowery?

[344] A. Yes, sir, mighty well.

Q. Has he talked to you about this in any way?

A. No, sir.

The COURT. All right, go ahead.

By Mr. QUILLEN:

Q. Sheriff, did I understand you to say that Mr. Beard had not made any statement to anyone out there at the jail?

A. As far as I know he hasn't.

Q. Were you present—was he in your jail on September the 23rd, on the evening of September the 23rd?

A. Well, I'd have to check the records, I'm sure he was. He was there, but I'd have to check the book and see.

Q. You didn't hear him make any statements that day to anybody about any of these offenses, did you?

A. No, sir.

Q. Now why was Mr. Beard removed from your jail to the jail in Smith County?

A. That's what I don't know.

Q. You don't know?

A. No, sir. Mr. Beard didn't know hisself, said he hated to leave.

Q. Did you know that the order signed by Judge Mitchell directing his removal recited the fact that he—it was being done to prevent his escape?

[345] A. Well, that's what the order said, but I had him over there. I don't think he could escape, Mr. Beard, where I had him in a cell where he couldn't escape.

Q. He had made no attempt to escape while you were——

A. Very good prisoner.

Mr. MERRITT. I object to this, I don't see in what way it relates to the allegations contained in this motion.

The COURT. All right, he says there wasn't.

By Mr. QUILLEN:

Q. Now do you recall whether any other prisoner was in the cell with Mr. Beard at any time?

A. I think Mr. Reynolds was.

Q. Who?

A. Jimmy Reynolds.

Q. What type charge was he in there for?

A. Well, he's in there for taking a girl across the state line and two or three charges, age of consent.

Mr. QUILLEN. I don't have anything further.

The COURT. All right, that's all, sheriff.

[Witness excused.]

The COURT. Now as I understand it, under this same motion, number twenty, the United States Attorney and the FBI agent would offer to be examined in regard [346] to it, if you desire to examine him, is that right?

Mr. MERRITT. Yes, sir.

The COURT. I believe you said you did want to talk to—to examine the FBI agent?

Mr. QUILLEN. Yes, sir.

The COURT. All right, let Mr. Hillin take the stand.

HENDERSON HILLIN, JR., a witness called to testify pertaining to the motion, after having first been duly sworn, was examined, and testified as follows:

EXAMINATION

By Mr. QUILLEN:

Q. Mr. Hillin, do you recall when it was that William Eugene Beard was transferred from the jail in Wilson County to Smith County?

A. Sometime in the first two weeks of October, Mr. Quillen.

Q. Now did you have any occasion to see him in the Smith County jail?

A. Is that Carthage, Tennessee?

Q. Yes, sir.

A. Yes, sir, I did.

Q. When was that?

[347] A. October 11th. I'm pretty sure.

Q. Do you know how long that was after he was transferred from the Wilson County jail?

A. No, sir. I don't. It was sometime the first two weeks he was transferred.

Q. Was Mr. Beard confined in a cell by himself in Carthage when you saw him?

A. I didn't see him in a cell; I talked with him in an interview room.

Q. Who else was present with you when you talked to him?

A. Special Agent Darrell Kamar, Baxter Key, district attorney general of that district, and Special Agent Bob Goodwin of the Tennessee Bureau of Criminal Identification.

Q. What time of day was this when you talked to him?

A. This was in the evening. I think sometime starting around seven or seven-thirty.

Q. Now did Mr. Beard make any statement to you at that time?

A. Did he make any statement to me?

Q. Yes?

A. As to what?

Q. Pertaining to this case.

A. Yes, he did.

[348] Q. What did he tell you?

Mr. MERRITT. I object to what he hold him. What's he going to do, discover the case before we go to trial?

Mr. QUILLEN. I think I'm entitled to anything the defendant may have told him.

By Mr. QUILLEN:

Q. Let me ask you this, Mr. Hillin, before you conducted that interview with Mr. Beard, you knew that I was his attorney?

A. That is correct.

Q. You did not give me any notice that you were going to conduct this interview?

A. No, sir. I don't normally do that either.

Q. And I take it you did recite to him his rights to have his attorney present?

A. That's correct, his constitutional rights were carefully outlined to him, and he was furnished with a waiver of rights form, and a rights form.

Q. Did he sign it?

A. He read it, indicated he understood it, but did not sign it.

Q. Yet he went ahead and made some statements to you?

A. He talked with us on that occasion.

[349] Q. How long did this interview last?

A. I don't have my notes with me, but it lasted several hours.

Q. And did he at any time express a desire to talk to his attorney during that interview?

A. I don't recall that he asked to talk with you; he knew where you were. I don't recall he asked to talk with you.

Q. Now do you know why Mr. Beard was transferred from Wilson County to Carthage?

A. Yes, sir, I understand the Circuit Judge there ordered his transfer because of security reasons and for his safety.

Q. For his safety?

A. That's my understanding.

Q. Did you know that this was going to be done before it was done?

A. I had heard that he was going to be moved.

Q. And from whom did you obtain that information?

A. I don't recall; it was either the United States Attorney's office of Mr. Goodwin or Baxter Key; I'm not sure.

Q. You have, throughout this investigation, been working closely with Mr. Goodwin, General Key, working together jointly on it, have you not?

A. That is correct, sir.

[350] Mr. QUILLEN. I believe that's all.

Mr. MERRITT. No questions.

Mr. QUILLEN. Would Your Honor permit us at this time and I do move to be furnished with a resume of the statement he furnished at that time.

The COURT. Do you have a resume of the statement?

Mr. HILLIN. I dont have it with me, sir. Special Agent Hamar has it, and the U.S. Attorney has it.

Mr. MERRITT. It's a motion to suppress, not a trial.

The COURT. I think that Rule 16 provides for the production of any statements made by the defendant.

Mr. MERRITT. Yes, sir, it does, and that motion has been made, and the government intends to furnish under Rule 16 those statements to Mr. Quillen, but we don't have them here right now.

The COURT. Well, that would come up under another motion.

Mr. QUILLEN. Well now, let me ask.

By Mr. QUILLEN:

Q. Mr. Hillin, you conducted this interview of Mr. Beard, of course, after you had been conducting interviews of Mr. Leeman?

[351] A. I had had two interviews prior to this time with Mr. Leeman.

Q. Was there any discussion between you and Mr. Beard about Mr. Leeman?

A. I don't understand how you mean that.

Q. Was there any discusison with Mr. Beard about Mr. Leeman, did it pertain to Mr. Leeman in any way?

A. He was involved, his name may have come up.

Q. Was your interview—this is a terrible questions—but can you state whether or not your interview with Mr. Beard was influenced in any way by the interviews you had previously had with Mr. Leeman?

A. I would say that it was not.

Q. Had you received any information from Mr. Leeman which might have guided you in framing the questions that you were asking Mr. Beard?

A. I would say emphatically not.

Mr. QUILLEN. That's all.

EXAMINATION

By Mr. MERRITT:

Q. Mr. Hillin, you advised Mr. Beard of his constitutional rights, and he read a waiver form, a standard FBI waiver form?

A. That is correct, sir.

Q. And then did he tell you that he was willing [352] to talk to you to some extent?

A. Yes, sir.

Q. Did he tell you that before he talked to you he wanted to consult with his attorney or that he wanted his attorney present at that time?

A. No, sir, he didn't indicate that he wanted his attorney present. He had actually sent for us at that time.

Q. He had sent for you at that time?

A. Yes, sir.

Mr. QUILLIN. We object to that as being hearsay unless he knows of his own knowledge.

The COURT. At the time you were there he said he had sent for you?

The WITNESS. Your Honor, I don't recall whether he said——

The COURT. I think you can state the circumstances under which you went to him.

Did you go on your own initiative?

The WITNESS. No, sir, I did not. I was home eating dinner, and I got a telephone call from Mr. Baxter Key, and he said Mr. Beard had indicated he wanted to talk to us, and I called Special Agent Darrell Hamar and informed him of the message, and I met him on the interstate, and we drove up and talked to Mr. Beard.

Mr. MERRITT. And that was on the 11th?

[353] A. Yes, sir.

EXAMINATION

By Mr. QUILLEN:

Q. Mr. Hillin, you do know that Mr. Beard was in solitary confinement there in the Smith County jail, and had been for a few days——

A. He said that night that he had been alone in a cell and it was of some concern to him.

Mr. QUILLEN. That's all.

EXAMINATION

By Mr. MERRITT:

Q. What you mean, this word solitary confinement, by that you simply mean he had been in a cell by himself?

A. Alone, yes, sir.

Q. He wasn't on bread or water or anything like that, was he, bread and water?

A. No, sir.

Q. You didn't see any rack up there of any kind, did you?

A. No, sir, I did not.

Mr. WILSON. If Your Honor please, may I ask a question pertinent to other matters that we have gone into and confine it strictly to that?

The COURT. Yes.

[354] EXAMINATION

By Mr. WILSON:

Q. Mr. Hillin, were any of the questions that you asked to the defendant Beard influenced by the information you received from the defendant John Leeman with reference to the defendants Ethridge or Cole?

A. No.

Mr. WILSON. I have nothing further.

The COURT. All right. Well, that seems——

EXAMINATION

By the COURT:

Q. When you say you advised him of his constitutional rights, you mean the right to have his attorney present?

A. That is correct, sir.

Q. The right not to say anything whatever?

A. Yes, sir; and that anything he did say might be used against him in a court of law.

Q. Yes, sir, and that anytime during the interview, he could stop the interview, cut it off?

A. That's correct, sir.

EXAMINATION

By Mr. MERRITT:

Q. Do you have a standard FBI form with you, waiver of rights?

A. No, I don't have one with me, but I can produce [355] one.

Q. Would you produce one and supply it in the record as exhibit number three, would that be——

The COURT. What exhibit would it be?

The CLERK. Be government's exhibit 1.

The COURT. On motion twenty, on defendant's motion twenty. All right, sir.

[Witness excused.]

(Exhibit No. 1 pertaining to motion number twenty was marked for identification and filed.)

The COURT. Anything further now?

Mr. QUILLEN. Not at this time, if the Court please.

The COURT. All right, let's see.

Now I believe that completes the motions which would require any taking of testimony.

[356–375]

[376]

Mr. BINKLEY. May it please Your Honor, may I be heard on another aspect of this particular motion?

The COURT. I suppose so, if it's related to this same subject.

Mr. BINKLEY. Well, it's related to this motion sir, and I would like to state, I joined in this motion for the defendant Bostic, and I believe that a severance should be granted to insure my client Bostic of a fair trial, because I think that this case is a case that takes on a sensational type case anyway, becuse of the allegations and things involved, and I just feel that where you have a man that's charged with aiding or conspiring to rob a bank, and then with robbing a bank, and then try him in the same case, where somebody else is being tried for a capital crime, I just feel it puts my client in such a position that he can't get a fair trial, because of what the jury is going to think, tying all of these things together.

Even though my client wasn't even at large at the time this murder is alleged to have been committeed, but [377] I just feel that trying these——

The COURT. Why would that be true? He's not charged with killing anyone, your client isn't.

Mr. BINKLEY. He's not charged with killing anyone, if Your Honor please, but I think a capital offense or murder is probably as grave an offense as you can charge someone with, and I don't see how you're going to be able to instruct the jury to the extent that they can forget about this murder and try my client just on the things that he's charged with, and it looks like to me that we've got such a conglomeration of things, that it gets to the point that I don't see how you can correct this with a charge, and I don't see that it's necessary to the government's case that they have this murder count in this particular case.

And I think the dangers of having this in the case, as far as prejudicing the jury, far outweigh the value of trying it at this time, because I just can't see how throwing all of them together is of any benefit, and I think there is a chance that

you will deprive at least my defendant and probably defendant Cole of a fair trial.

[378] . . . . . .

[379] . . . . . .

Mr. MERRITT. May it please the Court, the number one item is that in the murder case, under 2113(e), the government is going to have to prove the bank robberies anyway, because the section of the Code says "in avoiding and attempting to avoid apprehension for bank robbery", so an element of the crime in 2113(e) is the proof of avoiding apprehension for bank robbery, requiring the proof of the bank robbery, so to say that the crimes of bank robbery are so remote to the murder as to require a severance is completely inconsistent with Section 2113, because it's going to have to be proved anyway, and there would be some—could be some question, I'm [380] sure, if the cases were tried separately, the defendants would raise a question about the merger of the bank robberies then to the 2113(e) count. At least that could become a problem.

So number one, may it please the Court, it is incumbent upon the government, as an element of the offense under 2113(e), to prove the bank robberies, and we have therefore included the bank robberies in the indictment, and to grant a severance would simply require trying the case two or three times with fifty to seventy-five witnesses on the part of the government, and I don't think that's necessary anyway.

Plus the fact the defendant Self says it's prejudicial to him if it comes out in the trial some proof that he undertook to kill Ferguson some weeks before Ferguson was actually killed. Of course that's an overt act in the conspiracy anyway, such proof if that occurred would be an overt act in the conspiracy anyway.

The COURT. That is not alleged.

Mr. MERRITT. No, sir, but if it is a part of the conspiracy, it would be an overt act in the conspiracy and would have to come out anyway; so that's not a justifiable argument.

I'm a little bit at a loss to know exactly what I'm addressing myself to, because they were——

[381] The COURT. The idea is that there is a misjoinder of these counts to the prejudice of Beard and——

Mr. MERRITT. There was some talk about the statute.

The COURT (continuing). And Ethridge and Cole.

Mr. MERRITT. The statute and the broadness of the statute, and this wasn't a proper case for the application of 2113(e).

The COURT. And the remoteness in time. What do you have to say to that point?

Mr. MERRITT. Yes, sir.

The COURT. United States v. Gilmore, 124 Fed. 2nd 537, and United States v. Parker, 181 Fed 2nd—excuse me 181 Fed Sup. 73, page 73, affirmed 283 Fed 2nd 832, may it please the Court, make it very clear killing someone to avoid apprehension for bank robbery does not have to be part of the res gestae as Mr. Quillen says, does not have to be at the time or in conjunction with the bank robbery, and as Your Honor has already observed, the language of the statute itself indicates that that is not the case.

In saying—in using the disjunctive form, in avoiding or attempting to avoid the apprehension for the commission of such offense, attempting to free himself from arrest or confinement of such offense, obviously doesn't occur at the time of the bank robbery, or forces anyone to accompany [382] him without the consent of such person, that could occur at the time of the bank robbery or some subsequent time, plus the fact that these cases say that the statute is not to be interpreted in that way, so it doesn't appear that that is a good argument.

With respect to the argument here in motion number three, paragraph six, about incorporation by reference and being so unclear about that, the indictment is very clear about that. It says incorporation in count eight, it certainly doesn't include count one, because count one charges violation of 371, and count eight says very clearly in commission of offenses under Title 18, Section 2113.

Now with respect to William Eugene Beard, the immediate two counts above that charge him with violation of 2113, and obviously the section is incorporated, and the sections concerning Gary Lee Ethridge which charge him with 2113 are the ones that are incorporated, not 371, not count 1.

So there is nothing unclear about that. At least I dont know how it could be made any clearer. But as I understand the argument——

The COURT. All right.

Mr. MERRITT. May it please the Court, their basic argument is that the defendants Ethridge and Beard shouldn't be tried

for the murder as a part of a trial for the bank robbery, and my response to that is that, as the [383] Court has already observed, section (e) is a part of the same statute, plus the fact that the government is going to have to prove the bank robberies which are also additional offenses under the statute, is going to have to prove those as a part of the murder case, so it would certainly make no sense at all to grant a severance in that respect; it would just be the same proof or most of the same proof all over again in two trials, involving the same defendants.

The COURT. Yes.

Mr. MERRITT. And in the conspiracy count, I suppose if Your Honor granted a severance here, they would want a severance of count one from counts two, three, et cetera. The same logic would apply, and of course the courts have held that where you have the same series of transactions, in a conspiracy case, they should be tried together if at all possible.

And it is not going to be any prejudice in this case by trying them together that there wouldn't be trying them separately, because the same proof is relevant on the conspiracy.

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[384] * * * * *

[385] * * * * * *

Mr. MERRITT. May it please the Court, the proof is going to show that it's all part of the same barrel; now I didn't create the barrel.

[386] The COURT. Do you intend to show that the conspiracy continued on up until the time of the commission of the alleged killing?

Mr. MERRITT. Absolutely.

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[387–391] * * * * * *

[392] * * *

Mr. QUILLEN. I might add Mr. Hillin is present. I ask Your Honor to ask him if he has that, if he did make the statement.

The COURT. If Ferguson made the statement?

Mr. QUILLEN. If Mr. Hillin made the statement that he knew or had some information that Mr. Ferguson had tried to frame Beard in conection with the Bordeaux robbery.

The COURT. Well, let Mr. Hillin come forward.

Do you have such information? You heard this statement here.

Mr. HILLIN. Yes, sir, I have.

The COURT. And how does it—what does it consist of, what kind of information?

Mr. HILLIN. We have a statement from Mr. Ferguson that at one point he gave us a statement that James Herman Bostic and William Eugene Beard, in his belief, had robbed the Commerce Union Bank at Bordeaux, and I think I referred to this during one interview with Mr. Beard.

Mr. MERRITT. When in fact——

The COURT. This is a statement from Ferguson?

Mr. HILLIN. Yes, sir, it is.

[393] The COURT. And will that be included in the statements to be turned over?

Mr. MERRITT. Yes, sir.

The COURT. Well, that covers it then.

[394–411]

[412]

The COURT. You don't have to—those don't have to be written motions; they can be oral to be taken up with the Court in open court.

Now motion for change of venue. That motion, we have commented on it heretofore, but I'll reserve ruling on the motion to change venue until the voir dire examination of prospective jurors, to see whether or not we can impanel an impartial jury. That's sixteen.

[413–443]

[444] November 13, 1967

(First Day of Trial)

The COURT. Call the case.

The CLERK. Case 14,102, United States of America v. Gary Lee Ethridge, Georgia Ethridge, William Eugene Beard, James Herman Bostic, Sammy Ray Cole, and James Richard Self.

[445–455]

[456]

The COURT. * * *

[457]

[458]

Now, insofar as the motion for a continuance proceeds on the idea that there's been such adverse publicity that there should be a cooling off period, I think that—having looked at the items of publicity which were submitted in support of this motion, that there has not been such intense publicity in this case that the Court could say on that basis alone, the basis of the publicity alone, that I'm familiar with as shown by the record, that there should be a continuance.

I think the matter would have to be judged after making an effort to impanel the jury to see whether or not they are free from any influence on account of publicity. In other words, whether we can impanel a fair and impartial jury, a jury which has no preconceived ideas about this case, about guilt or about innocence.

If we can do that, after appropriate interrogation, well then that would certainly have a bearing on the question of whether or not there should be a continuance, and I will reserve ruling on the motion for a continuance insofar as it is predicated upon adverse publicity. The same reservation or ruling will be made further with respect to the motion for a change of venue.

[459] * * * * * *

The various defendants—and you will have to consult the record on this. I don't have them before me [460] right now, but the defendant Beard and the defendant Ethridge, and some of the other defendants have moved to sever count eight of the indictment from the remaining counts of the indictment on the alleged ground that there will be prejudice if this count is tried along with the other counts.

I've gone into this matter carefully, and made an effort to determine whether or not there has been any showing of prejudice by the joinder of this count, and I'm unable to see where there would be any prejudice. This count charges, count eight charges that a certain person was killed in the process of avoiding and attempting to avoid apprehension for the bank robberies described in the other counts.

Now it is perfectly obvious if this count should be severed and tried alone, by itself, that in proving that count, the government would have to prove those same bank robberies, because the statute itself links the two, and so does the

indictment, so if there's any prejudice in trying count eight with the other counts, that same prejudice would be present if count eight should be severed and tried alone, because the same evidence would come before the jury insofar as count eight is concerned.

Mr. QUILLEN. May I say something at this point, if the Court please? I think the biggest danger of prejudice is going to come from the proof around count one, [461] conspiracy.

The COURT. What do you mean?

Mr. QUILLEN. Well, if that—if count eight and the other counts, that is counts two, three, six, seven and eight, are severed from the conspiracy count, then we might avoid prejudice, but if we get into the conspiracy count and get into a lot of hearsay testimony that would not be admissible otherwise, I think that's where the biggest danger is.

The COURT. That's pure speculation. There's no showing as of this time that could justify me saying that that would cause any prejudice, and insofar as the other defendants are concerned, they are not charged with violating the statute under count eight. They are not charged——

Mr. WILSON. Ethridge is, if Your Honor please.

The COURT. I'm talking about Ethridge and Beard in count eight. When I said other defendants, I meant defendants other than those two. Some of them have also made a motion to sever this count eight. Not being charged with that, I cannot see that there would be any prejudice.

Now it must be borne in mind that the pattern as set forth in count one is that this alleged killing was a part of the conspiracy itself. Now that's the theory of the indictment, whether or not the government will be able to prove it, I don't know, but that's what the indictment alleges, [462] and one of the overt acts charged in the conspiracy is this alleged killing, so even if I should sever count eight, there would still be admissible evidence to show the killing itself under the conspiracy count as an overt act, so I can't see that that would be of any particular aid or assistance to the other defendants not charged in count eight to cause a severance to be made, and it seems to me that in all probability, that even if we were trying here just the bank robbery counts, substantive counts alone, and leave the conspiracy count out of it, and also the count eight in which the killing was alleged, that it still would be a serious question that the government would be entitled to prove the

killing as evidence to support the bank robberies, because any efforts to avoid apprehension for commission of a crime such as flight or any other act would be admissible evidence to establish the existence of those subsequent offenses.

So when you analyze it down into its integral parts in this way, why I think it's very clear that there has been no showing of prejudice, certainly no showing made here to me to support the alleged ground in the motion that some of the defendants would be deprived of the testimony of the co-defendant Bostic. That's just speculative, unsupported, unsubstantiated statement. So when you take the entire matter together, I think this motion is not well taken, and accordingly will be overruled.

[463] * * * * * *

[464] * * *

Now let's see, was there any other motion that I reserved ruling on?

Mr. BINKLEY. May it please Your Honor, there was one motion to either strike or change the language of this eighth overt act alleged in count one.

The COURT. Well, yes, I overrule that motion. I don't see any way I can revise the contents of the indictment, and I think it's an overt act as alleged in the indictment. If he had an unregistered—I don't intend to charge the jury that possession of an unregistered firearm—is that what you are talking about?

Mr. BINKLEY. No, in this count eight, this alleges willfully harbored.

The COURT. You are talking about overt act number eight?

Mr. BINKLEY. Yes, sir, and what I'm concerned about is the fact that in order to do this, the government is going to be showing that Bostic is confined in the penitentiary, [465] and this is something that I think there will be a chance that the jury will be so prejudiced by the fact that he's confined out there that this will deprive him of a fair trial, and I just feel that this is something that——

The COURT. Why would they have to show that he was in the penitentiary?

Mr. BINKLEY. Well, this federal warrant that was issued for his arrest was—it was a fugitive warrant.

The COURT. Yes.

Mr. BINKLEY. And I can't see how this is material to the government's case, that it has to get it in.

The COURT. I don't quite see how proof of that would establish the fact that he is in the penitentiary; it would show that a warrant had been issued for him, but what disposition had been made of it would not appear.

Mr. BINKLEY. Well, if Your Honor please, the substantive count of this has been severed.

The COURT. Yes, that's true.

Mr. BINKLEY. I just feel that this is going to be—this is going to put my client in a position—on proof from the government that the only thing I can see would be to prejudice the minds of the jury, because just to show that there is a federal warrant for him as a fugitive, that puts me in a position where if I had chosen not to put him on the stand, I'm almost in a position to put him on the stand [466] to explain what this fugitive warrant was about.

The COURT. Do you know of any authority to revise the language of an indictment. I can strike——

Mr. BINKLEY. That's what I moved for originally. It was the Court's suggestion that the government might could revise it. I move that be stricken.

Mr. MERRITT. May it please the Court, on that issue, I might state in all candor, the government intends to prove that his client had escaped from the penitentiary as a part of the conspiracy. It would seem to me the ruling on——

The COURT. Escape from the penitentiary?

Mr. MERRITT. Yes, sir.

The COURT. And that's the reason this warrant was issued, is that right?

Mr. MERRITT. Because he had escaped, yes, sir. The reason the warrant was issued. The proof will show not only that, but just a few days after he had escaped, he was at a meeting with the conspirators. He robbed a bank. He was protected by those conspirators, and one of the overt acts in the indictment will be that this—that a part of the conspiracy to rob banks was to protect him in his escape so he could be of use to them. So that will be——

Mr. BINKLEY. If Your Honor please, in all candor, I think what the attorney general is saying is we are [467] going to show that this man escaped from the penitentiary, and then a couple of days later he happened to be with some bank robbers or alleged bank robbers, and I think this is so remote that he might be able to say, well, now, ladies and gentlemen of the

jury, we didn't prove that they helped him escape, or this escape had anything to do with it, and if your minds have been prejudiced by this, we are sorry about this, but this is what we thought, because two or three days after he escaped, he was seen with other people that we allege was involved in committing a crime. To me the attorney general is just saying that the only thing I'm going to do is show this jury that this man was in a penitentiary.

The COURT. And escaped.

Mr. MERRITT. We are going to prove——

Mr. BINKLEY. And escaped.

Mr. MERRITT. We are going to prove in this case that this man Bostic went in the bank with a gun in his hand, that prior to that time and just after he had escaped from the penitentiary, he was in the process, with the other conspirators, of planning the bank robbery.

Mr. BINKLEY. Are you saying prior to the escape?

Mr. MERRITT. No, prior to the bank robbery, and that they were in the process of harboring and concealing him as a part of the conspiracy so that he could go in as a [468] part of the conspiracy and rob the bank.

Mr. BINKLEY. If Your Honor please——

Mr. MERRITT. That's going to be our proof.

Mr. BINKLEY. Unless the government is able to show that there was a conspiracy prior to this escape, to show this escape as being a part of the conspiracy, then the jury is going to be prejudiced against my client because he escaped from the penitentiary, just because the federal government might think that he was thinking about getting with these fellows.

The COURT. That's what they allege as part of the conspiracy and if he did escape, and was harbored, how can I separate it arbitrarily? I mean if that's the theory of the government's case. They didn't cause him to escape; he did it himself.

Mr. BINKLEY. They didn't cause him to escape, but they are not going to be able to show that he escaped to conspire to rob a bank.

The COURT. Unless they had proof of a conspiracy prior to that.

Mr. BINKLEY. If they don't, it's going to be before the jury what's been said, and you are not going to be able to erase it from the jury's mind.

The COURT. That's an inherent risk in any conspiracy case. I will overrule that particular motion.

[469] * * * * *

The COURT. I've read the order, and I'm pretty sure it closely follows the rulings that I made from the bench, but I would like for defense counsel to see it.

Mr. MERRITT. That's in there about relieving him. I just wanted to see if there were any other motions.

There's a motion number six for severance of defendants and not of counts. I don't know whether the Court——

The COURT. Severance of defendants?

Mr. MERRITT. Yes, sir, motion number six to sever defendants in the case.

The COURT. You mean to give each one a separate trial?

[470] Mr. MERRITT. Yes, sir.

The COURT. Overrule the motion.

There was a motion to strike overt acts seven and eight, so I will overrule both of those motions. I think that covers it.

* * * * *

Mr. MERRITT. May it please the Court, with reference to the other case, the Wingo case is to be heard before the Court of Appeals en banc, with all nine judges hearing that, on December the 7th. I have no way of knowing whether or not this trial will last past that time. I have called the Court of Appeals, Mr. Bateman and Mr. Wilson are both in that case, to ask them if that could be put off, and the Court of Appeals has advised me that it would be a terrible imposition on the Court to put it off, because all of them are going to get together and have plans to get together at that time, and so the only other alternative I know of would be a recess on that day.

The COURT. What's the day?

Mr. MERRITT. December the 7th.

The COURT. I believe Mr. Quillen has a date [471] there.

Mr. QUILLEN. On the sixth, if the Court please.

The COURT. What is your case?

Mr. QUILLEN. This appeal of James Callas for whom the bond was revoked. I've had this problem before, but Mr. Rose, the Clerk up there, tells me that these cases are assigned out to three different judges.

The COURT. I know the procedure.

Mr. BINKLEY. May it please the Court, I have something on that——

The COURT. What is it?

Mr. BINKLEY. This action of Your Honor, I serve on a board for the State.

The COURT. I can't postpone it for that, you'll have to get out of it. What kind of board?

Mr. BINKLEY. It's a Board of Review for the Employment Security Division.

The COURT. We'll have to cook up some sort of excuse for that; because we can't postpone a trial like this to accommodate a state board. I think—unless it is something that just absolutely an emergency of some sort of overriding nature.

This 6th and 7th, you might be able to have the 6th and 7th, you might be able to have the 6th date rearranged, but since you have all nine members to hear the Wingo case on [472] that date, I think we would have to recess for that.

Mr. QUILLEN. If the Court please, my client would I think react against any motion on our part to continue it, because he's in confinement. If the Court will allow him bond——

Mr. MERRITT. That's not the point in the appeal; it's just the appeal from the trial of the case.

The COURT. Well, I don't know. We might adjourn for two days, sixth and seventh, but then that just prolongs this trial and keeps the jury locked up.

Mr. MERRITT. If I may suggest, I hadn't called the Court of Appeals——

The COURT. Did you tell the Court of Appeals we were probably going to have a jury sequestered in this matter?

Mr. MERRITT. Yes, sir. Yes, sir, we can call them on that particular case and see if we can rearrange that.

The COURT. See if you can do that. If not, we will have to recess this trial.

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[473] * * * * *

[474] * * * * *

Mr. WILSON. We have one other matter under consideration. The defendant Ethridge maintains of course that he has twenty challenges.

The COURT. I was coming to that next on the next order of business. Do you want to take that up now?

* * * * * *

[475] * * * * * *

Mr. BINKLEY. I represent Bostic, and we feel that we are entitled to ten.

The COURT. Is Bostic only in the conspiracy count?

Mr. BINKLEY. No, we are in two counts, if Your Honor please.

Mr. MERRITT. Three. Bostic is in three, I believe.

Mr. BINKLEY. We fell we should be entitled to ten for each count.

The COURT. Well, what's your position, Mr. Merritt?

[476] Mr. MERRITT. May it please the Court, my position is that the defendants jointly, there is some discretion here in the Court, the defendants jointly should be granted thirty challenges total, and the government twenty-six, that theory is that the law says in capital cases, each side is entitled to twenty a side, doesnt say party or count in the indictment, it says each side is entitled to twenty. Since some of the defendants are not charged with a capital offense, but are charged with bank robbery, they would be entitled to jointly their regular ten under the second sentence of Rule 34(b), which says the government is entitled to six, and the defendant or defendants jointly to ten peremptory challenges, so my theory is that the defendants are entitled to thirty, and the government to twenty-six.

Mr. BATEMAN. May it please the Court, if the interpretation is so many per side, the defendant would contend that this is an octagonal indictment; there are eight sides in it. These defendants have no control over being lumped together like this, or with whom they are indicted. I think it would be significant deprivation of the defendants' rights to compel them to share their challenges in some way with six other, or five other defendants. There's no way to apportion them.

Mr. MERRITT. The government wouldn't have any objection if the Court finds it is necessary to give the two [477] defendants who are indicted for capital offense their twenty jointly, that's what the section says, and give each other defendant ten apiece. We don't have any objection to that. We don't think it's

necessary, but this business about giving ten challenges on the basis of each count of the indictment is preposterous. I've never heard of that before. That means in a whisky indictment where you have three or four counts, you get forty challenges. That's unheard of.

• • • • •

The COURT. Well, I think we can proceed with an attempt to select the jury, and for the present, I will allow [478] the government twenty-six challenges and the defense thirty.

Now under the rule, applicable rule, I have the authority where there's more than one defendant to allow the defendants additional peremptory challenges, and to permit them to be exercised separately or jointly, and if it appears that is necessary, I will consider them at the time. It may be that you will not exercise all of these challenges, it depends on the circumstances.

• • • • •

[479] • • • • •

Now then, the method to be used to select the jury, I have agreed, will agree to go along with the idea of interrogating the jurors separately, one from another, so that one juror may not be influenced by the answers given by another. Now that's going to make the process of selection somewhat more prolonged than otherwise would be the case. I think the indictment should be read to the jury, and I have in mind calling all of the prospective jurors in the courtroom and reading the indictment to them one time rather than to re-read the indictment each time a member of the jury is called, if there is no objection.

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[480–555] • • • • •

[556] • • • • •

FRANCIS W. NORWOOD, a witness called to testify in the pre-trial hearing, after having first been duly sworn, was examined, and testified as follows:

EXAMINATION

By the COURT:

Q. Mr. Norwood, you are an FBI agent?

A. Yes, sir.

Q. How long have you been serving in that capacity?

[557] A. For approximately twenty-seven years.

Q. How long have you been serving in that capacity in this district?

A. Since 1947.

Q. Were you assigned to do part of the investigative work in this case that's on trial?

A. Yes, sir, I was.

Q. Did you take any of the—did you interview any of the witnesses or were you present when the witnesses were being interviewed?

A. Yes, sir, some of them.

Q. Did you interrogate—in this case, did you interrogate the defendant Leeman, one of the parties named as a defendant in the action?

A. Yes, sir, I participated in an interrogation of Mr. Leeman.

Q. One or more?

A. Two.

Q. Two?

A. Yes, sir.

Q. Could you give me those dates?

A. October the 16th and October the 24th.

Q. Was Mr. Merritt present on the 16th?

A. Yes, sir.

Q. Was this interview conducted in his office?

[558] A. Yes, sir, it was.

Q. Who else was present at that time?

A. Special Agent Hillin and a Mr. Bobo.

Q. Now at that time, let's direct your attention to the 16th first, was any information conveyed to the government at that time, on the 16th, which grew out of the attorney-client relationship between Mr. Quillen and Mr. Beard, one of the other defendants in this case?

A. (No answer.)

Q. In other words, did the defendant Leeman relay any information to the government that he had obtained from Mr. Quillen which grew out of the relationship between Quillen and Beard?

A. None to my recollection; I was trying to remember the entire interview. I don't recall anything of that nature.

Q. Were any questions put to the defendant Leeman which were designed to elicit information about this attorney-client relationship between——

A. None.

Q. —Quillen and Beard?

A. No, sir.

Q. Were any questions put to him which were designed to elicit information in regard to any defense strategy or tactics or moves to be made by the defendant?

A. No, sir.

[559] Q. Were any questions put to him to bring out information which he may have obtained through his attorney Quillen, which grew out of the attorney-client relationship between the other defendants and their respective attorneys?

A. No, sir.

Q. Or with respect to any defense strategy or tactics that might have been arranged or discussed between the other defendants and their attorney?

A. None.

Q. State whether or not the questions that were put to him were designed to elicit information in regard to Leeman's knowledge of events which had occurred prior to the filing of the indictment in this case about the substantive offenses?

A. Yes, sir, questions were put to him concerning the events which had transpired.

Q. Which constituted the basis of the indictment?

A. Yes, sir.

Q. Now go to the 24th of October, that interview, you were present then when he was interviewed?

A. Yes, sir.

Q. In McCabe Park?

A. Yes, sir, I was.

Q. Was that in an automobile?

A. Yes, sir, it was in an automobile.

[560] Q. Who was present? Who all was present at that time?

A. Special Agent Henderson Hillin, myself, and Mr. Leeman.

Q. Now I'll ask you the same questions about that particular interview on the 24th, were any questions put to Leeman seeking knowledge about any defense strategy or tactics?

A. No, sir.

Q. On the part of Beard or Leeman or any other defendant?

A. No, sir.

Q. Did he convey any information voluntarily that he acquired knowledge of by reason of the fact that attorney Quillen was representing him and also representing defendant Beard?

A. None to my recollection.

Q. Would you look through these statements and hand to me the summaries or statements prepared by the FBI, I suppose, which represents the interviews of October the 16th and October the 24th.

Now that's Mr. Merritt's statement of the 31st.

A. This is the 16th.

Q. This one you first handed me is the 16th?

A. Yes, sir.

Q. All right.

[561] A. And this one is the 24th, for the 24th.

Q. Yes, sir.

A. And these are not applicable.

Q. All right. Now look at the statement that you handed me representing the October 16th interview and state if that is a fair summary of the interview, the information that was conveyed at that time, a fair and complete summary?

A. (The witness reads the statement as requested.)

Q. All right, what is your answer?

A. I would say that is a fair and reasonably complete reporting of the results of the interview.

Q. Was there anything that was not put in this interview, summary, that pertained to this attorney-client relationship that we are inquiring about, between Beard and Quillen?

A. No, sir, there was nothing from a client-attorney relationship.

Q. Now make the same examination of the document representing the interview of October 24, 1967, and answer the same questions as to that.

A. (Witness reads the statement as requested.)

Q. All right, sir.

A. I would make the same answer concerning that.

Q. The same answers with respect to attorney-client relationships?

[562] A. Yes, sir.

Q. All right. Now those were the only two interviews of Leeman that you participated in?

A. Yes, sir.

Q. Now you have, I suppose, investigated other aspects of the case?

A. Yes, sir.

Q. Have you been pretty closely engaged in—continuously in investigating it from time to time?

A. Yes, sir, I have from time to time. Of course I have other duties to perform.

Q. Oh, yes.

A. And I've been off on leave during part of the time, but I have been closely associated with the investigation.

Q. Of course what the Court is inquiring into here is to see whether or not there's any indication or any evidence that there's been an invasion of the confidential attorney-client relationship which is existing between Beard and his counsel, Mr. Quillen, and between any of the other defendants and their respective counsel.

You understand what I'm interested in determining?

A. Yes, sir.

Q. Is there anything that you know of at all or [563] any facts or circumstances which would have a bearing on the Court's determination of that particular point other than these interviews that you have spoken of?

A. Well, to my knowledge, at no time in any of the interviews where I have been involved or the investigation where I have been involved has there been any effort or invasion of the attorney-client relationship whatsoever.

Q. Do you know of any effort on the part of the U.S. Attorney or any FBI agent to breach this relationship?

A. No, sir.

Q. Or to invade it or trespass upon it or otherwise?

A. No, sir.

The Court. All right. Now, Mr. Quillen, do you want to ask him some questions?

Mr. Quillen. If the Court please, I move to be permitted to inspect the statements that Mr. Leeman gave.

Mr. Merritt. I object to that.

The Court. Yes, I'll deny that.

Let me make this statement for the record: I have personally read these two statements and the others, and there is nothing whatever in any of the statements—in fact I was very much

impressed with the fact that the information conveyed has a definite indication that [564] it deals solely and alone with events which this person Leeman purported to know about before the indictment could ever have been filed, events dealing with the matters charged in the indictment, pre-existing the indictment, have no connection with the events afterwards with one minor exception, and that is in the statement of October 4, 1967, in which the statement is made—was made by Leeman, according to this summary, that he has an attorney, Mr. Quillen, who has advised him not to talk with any FBI agent.

However, Leeman stated that he wanted to say certain things, and to answer certain questions put to him.

Now, with that one exception, there's no indication in any of these statements that there was any effort to invade any attorney-client relationship, and of course that's the relationship between Leeman and his attorney and not the relationship between Beard and his attorney and any other defendant who is on trial, and his attorney. That's the only thing I could find in any of them that had the slightest bearing upon the relationship, and I will file these, and they will be available to you at the time of cross examination if this man takes the stand as a Jencks Act statement.

[565] EXAMINATION

By Mr. QUILLEN:

Q. Mr. Norwood, were you or have you since the indictment, participated in the interview of the defendant William Eugene Beard?

A. What's the date of the indictment?

Q. September the 26th, 1967.

A. No, sir.

Q. At the time you were conducting these interviews with Mr. Leeman, did you know whether or not other agents were conducting or had conducted some interview with Mr. Beard?

A. Yes, sir.

Q. And that was since the indictment?

A. Yes, sir.

Q. Now are those statements that, if I may ask that much about that, are they written—the statements you have just handed to the Court, are those summaries prepared as a summary of the interview of Mr. Leeman, or is it a statement written in the first person by him?

A. It's not a statement written in the first person; it is a reporting of the information that was developed in connection with the interview.

Q. But it is not complete in all of the details, it is?

A. It is a reasonably complete statement of the [566] information furnished.

Q. Now what day was it you interviewed Mr. Leeman at McCabe Park?

A. That was on October the 24th.

Q. Where at McCabe Park were you conducting that interview?

A. We were in a parking area. I don't know further how to describe it other than the parking area at the golf course.

Q. Was it the parking area immediately behind the clubhouse?

A. I'm not that familiar with the clubhouse, Mr. Quillen. There is a building there which I assume was the clubhouse, and we were near that building.

Q. Did you see me there that day?

A. Yes, sir.

Q. Did Mr. Leeman undertake to conceal himself from me at that time?

A. He sat in the automobile.

Q. Now have you at any time discussed with Mr. Leeman or heard any statement attributed to him about the possibility of the type weapon that might have been out in the vicinity of Statesville, Tennessee, the night that Larry Ferguson was killed?

A. I don't recall any specific questions with [567] regard to the weapons as you worded the question at that particular time or at any time during—when I was present during an interview with Leeman.

Q. Have you heard any discussion either from Mr. Leeman or anything attributed to him about the possibility of other unidentified people, either identified or unidentified, having been in the Prosperity Community, that is as it relates to this case, on the early morning of September 23rd?

A. In connection with these interviews?

Q. Have you heard that from Mr. Leeman at any time?

A. No, sir.

Q. Did you hear anything from Mr. Leeman pertaining to a shotgun that might possibly in some way be connected with this case?

A. Did I personally hear anything from him?

Q. Yes.

A. No, sir.

Q. Did you hear anything from anyone else that you might attribute as coming from Mr. Leeman?

A. You mean from another agent or from——

Q. Yes.

A. Yes.

Q. Do you mind stating what that was, please?

Mr. MERRITT. I object to that; he can state [568] who he heard something from, but I don't see the point in just discovering all of the government's evidence. He asked if he heard anything about any shotgun from Leeman, and he says he did not hear anything about a shotgun, and he said, did you hear anything about a shotgun from anyone else.

Mr. QUILLEN. That might be attributed to Mr. Leeman.

The COURT. Did you hear anything from another agent about a shotgun that might be attributable to Leeman?

The WITNESS. Yes, sir.

The COURT. I think I'll let him answer it. What was it?

By Mr. QUILLEN:

Q. Just what was it you heard?

A. I heard the information that—from another agent, that Leeman had—as I recall—this is hearsay, and it's not too clear in my memory, but that Leeman had given a shotgun to one of the defendants on this particular night.

Q. Can you tell us what agent that was?

A. Mr. Hillin, I believe.

Q. Now do you recall, do you know when it was that Mr. Leeman gave that information to the government?

A. No, sir, I don't.

[569] Q. There's nothing contained in either of these two statements about that particular——

A. No, sir.

Mr. QUILLEN. May I consult with Mr. Wilson a moment?

By Mr. QUILLEN:

Q. Mr. Norwood, have you heard from either Mr. Leeman or other agents or persons who are connected with the prosecu-

tion of this case anything that might be attributed to Mr. Leeman to the effect that there might be a defense based upon the proposition that there were people other than those indicted who might have been in the Prosperity Community and connected with the killing of Larry Ferguson?

A. No, sir.

Q. You haven't heard that as even a rumor from other agents?

A. That would be attributable to Leeman, no, sir.

Q. Have you heard it from other agents attributable to any source?

Mr. MERRITT. I object to that; we are talking about Leeman.

The COURT. Has to be attributable to Leeman.

By Mr. QUILLEN:

Q. Have you heard it from Charles Bobo?

Mr. MERRITT. I object to hearing anything from [570] Charles Bobo. They are not trying to dismiss the indictment on the grounds of Bobo being a witness.

Mr. QUILLEN. I think if it was going through Leeman to Bobo to the agents would be just as corrupt.

Mr. MERRITT. What Mr. Bobo tells the government?

The COURT. What he tells Bobo?

Mr. QUILLEN. Yes, sir. Bobo has been working with the government all along.

The COURT. I don't know about that, but what would that have to do with the relationship between you and Beard?

Mr. QUILLEN. It would still mean that the government had the spy in Beard's camp.

The COURT. No.

Mr. MERRITT. May it please the Court, we are not responsible——

The COURT. If you can show that it came through Leeman——

Mr. QUILLEN. If it came from Bobo, it probably came through Leeman.

The COURT. Probably; we can't guess at the thing. Sustain the objection to the question.

Mr. QUILLEN. I don't believe I have anything further at this time.

[571] The COURT. All right, any other questions by any defendant?

By Mr. WILSON:

Q. Mr. Norwood, directing your attention to the phraseology of the questions that were propounded to you by His Honor a moment or two ago, and substituting the name of Ethridge and Cole and Mrs. Ethridge of course, using the plural here, did you, on either of those two interviews receive any information from the defendant Leeman concerning the—any phase of the conducting of the defense either financial or strategic, either one?

A. No, sir.

Q. I know that these statements here are the typical Jencks Act statement, and are opened up to the defense. Did you on any of the occasions where you participated take a written, signed statement from the defendant Leeman?

A. No, sir.

Q. Has he at any time to your knowledge executed a written, signed statement?

A. To my knowledge, he hasn't.

Q. Did the defendant Leeman at any time caution you or any other government agent against divulging the fact to either the defendant Cole, Georgia Ethridge, or Gary Lee Ethridge concerning his activities on his behalf which of course [572] were in favor of the government? I'm speaking of he, himself, make such a request?

Mr. MERRITT. Object to that, because it's irrelevant.

Mr. WILSON. I don't think it's irrelevant.

The COURT. Did he make the request?

Mr. WILSON. Did he, Leeman, make a request to any government agent or any arm of the government during the course of these interviews that his position with the government and being—becoming a government witness and giving this information be secluded from the three defendants that I represent. That's not asking him to divulge their case. I just want to know what his frame of mind was at the time that he was making these interviews, and the condition surrounding them.

The COURT. If he requested that it not be divulged to the other defendant?

Mr. WILSON. Yes, sir, if he did.

Mr. MERRITT. I can't see the relevancy of that.

Mr. WILSON: I will announce to the Court then that on the date of the arraignment in this Court, that not knowing of the arrangement that the government had made with the defendant Leeman, Mr. Quillen and myself, [573] acting in ignorance of the relationship that the defendant Leeman then had caused joint interviews to be conducted concerning the defense and concerning efforts to try to finance the defense on that particular day.

The COURT. Apparently that didn't come to this witness' attention through Leeman, that's what he said, did not.

You say it did not?

The WITNESS. I don't——

Mr. WILSON. What I want to know is specifically what—the condition of mind the man Leeman was at the time he made these statements with respect as to secreting his activities from these other three defendants here.

The COURT. Well, let him answer. He might have had a certain state of mind, but it was not participated in by the government and the government didn't derive any information as to defense strategy or plans from it. I can't see how it would be material, but go ahead and answer it.

The WITNESS. Frankly, Mr. Wilson, I don't recall any statement he made in my presence not to tell anyone.

The COURT. All right.

[574] By Mr. WILSON:

Q. Now am I correct then that on the—which one of the interviews was the man Bobo present while the interview was being conducted?

A. That was on the first interview, on the 16th.

Q. On the 16th?

A. Yes, sir.

Q. Did you at that time know that interviews had been conducted on the 4th and a slight interview the 10th and one on the 14th?

A. I don't—I didn't know the dates; I knew some contact had been made.

Q. You had heard that from other agents?

A. Yes, sir.

Mr. WILSON. No further questions.

EXAMINATION

By Mr. BATEMAN:

Q. Mr. Norwood, you have no way on earth to know what information that Mr. Leeman may have obtained or may not have obtained by virtue of his relationship with his counsel, is that true?

A. Is that a statement or a question?

Q. I say is that true, that is a question?

A. I'm sorry, you lost me somewhere, Mr. Bateman. Would you repeat it?

[575] Q. You have no way of knowing what information Mr. Leeman may have possessed that he might not have had except for his relationship with his lawyer, have you?

A. No.

Q. Was the matter of a shotgun a matter of investigation in connection with this case?

Mr. MERRITT. Object to that.

The COURT. What's that?

Mr. BATEMAN. I say, was the shotgun that's been mentioned here, was it of interest or was it considered pertinent to this case?

The COURT. Let him answer.

The WITNESS. Yes.

Mr. BATEMAN. That's all.

By Mr. BATEMAN:

Q. Did it become pertinent by reason of any statement made by Mr. Leeman to your knowledge, from your knowledge or from what you may have learned from other agents?

A. To the best of my knowledge, it became pertinent as a result of a statement by him.

Q. And these reports that Judge Miller has read—by the way, these two I believe you testified about, are these summaries or agents' reports that you dictated?

A. Mr. Hillin dictated them.

Q. Mr. Hillin dictated them?

[576] A. Yes.

Q. As far as you know, in any of the reports of interviews with Leeman is this shotgun mentioned at all?

Mr. MERRITT. May it please the Court, I cleared all of that up the other day about that shotgun, and he called me at Mr. Quillen's request to tell me about it.

Mr. QUILLEN. That's false, if Your Honor please; I didn't direct him.

Mr. MERRITT. Whether it's false or not false——

The COURT. Is that the incident where he said it seemed to him that he heard something about the shotgun?

Mr. MERRITT. No, sir.

The COURT. What's that about the shotgun?

Mr. MERRITT. After that Friday when Mr. Quillen and I came to Your Honor's chambers, I talked to Mr. Leeman on the telephone, either that day or the next day, and he told me that there was something about this case that he hadn't told me about, and that he was calling to tell me about it, because he told me Mr. Quillen suggested that he should, or that he was going to cross examine him about it, or something, and said that on the night that Ferguson got killed, the defendant Ethridge and the defendant Self had come [577] by his house and gotten the shotgun in his possession that belonged to Ethridge, and that was it.

Now that's the shotgun.

The COURT. Well, that would—that was information that he knew about before the indictment was filed, wasn't it?

Mr. MERRITT. Oh, yes, sir. Came by his house and got the shotgun.

The COURT. Yes.

Mr. MERRITT. And Mr. Quillen knows all of that.

Mr. QUILLEN. Mr. Merritt asked Mr. Leeman if he hadn't heard something to the effect about a possible defense, as I recall.

Mr. MERRITT. That's not true.

Mr. QUILLEN. Pertaining to a shotgun.

Mr. MERRITT. Asked him something about a possible defense?

The COURT. He didn't use that word "possible defense".

Mr. QUILLEN. He may not——

The COURT. You did ask him if he heard something——

Mr. MERRITT. Something about a shotgun, and his reply, seems like I've heard something about that.

[578] Mr. QUILLEN. That's all——

Mr. MERRITT. That's all in the record.

The COURT. That statement was made to you before he made this latest statement?

Mr. MERRITT. Yes, sir, that's correct. My objection at this point is that that's all in the record. I don't see any sense in going over and over it.

Mr. BATEMAN. Well, the point of it, as I see it, is this, Your Honor. Here is an item about which Leeman evidently furnished information which apparently hasn't been reported on in any of the interviews.

Now the defendants are under a very heavy burden here, as I understand it, we would have the burden under Your Honor's ruling of showing some prejudice by virtue of this relationship between the government and Leeman.

The COURT. That's right.

Mr. BATEMAN. And the only way we can carry that burden is by the interrogation of these people who knew what happened, what was said.

The COURT. That's what you are doing.

Mr. MERRITT. We'll stipulate that.

The COURT. Have you completed your interrogation on that point? If not, go ahead and complete it. [579] I'll allow you to complete it.

Mr. BATEMAN. My question to him was, do you know whether or not this testimony obtained from Leeman appears in any of these reports.

The COURT. Summations?

The WITNESS. The only two summations that I am thoroughly familiar with are the two interviews in which I participated, and there was no mention of a shotgun in either of those interviews. As I testified earlier, this information came to me from another individual, not from——

By Mr. BATEMAN:

Q. I understand that, but are you not familiar with the summations or the reports of the other interviews with this man?

A. Not altogether.

Q. You haven't read them?

A. No, sir.

The COURT. All right. Mr. Binkley?

EXAMINATION

By Mr. BINKLEY:

Q. Mr. Norwood, at the time you questioned Leeman on the 16th and 24th, were you aware that he was represented by Mr. Quillen?

A. Yes, sir.

[580] Q. Did you have any discussion at all about the fact that he was represented by Mr. Quillen?

A. On the 24th, we saw Mr. Quillen in the park, and he—Leeman recognized him.

Q. Did he—did you or anyone connected with the government ever, in your presence, give Mr. Leeman any instructions concerning his conduct with his lawyer, Mr. Quillen?

A. No, definitely not.

Q. On your interview on the 16th, was any statements made concerning—made with Mr. Leeman concerning how he should plead or how he should conduct himself at the afraignment?

A. No, sir.

Q. Were you aware at the time of this interview on the 16th, that the arraignment was going to be two days from then?

A. I can't say that I really was. The date of the arraignment was not of any particular significance to me as an investigator.

Q. Well, on the 16th, were you—at that time was it determined that Mr. Leeman would be a witness for the government?

A. Well, that's a question the United States Attorney would have to answer as to whether or not he had determined to use him as a witness.

[581] Q. Well, I'm asking you for your opinion in dealing with him, was it your opinion that at that time——

Mr. MERRITT. I object to that, he's answered that question. He just doesn't make that decision, and I don't think——

Mr. BINKLEY. I asked him if Leeman was willing to be a witness for the government; certainly he can answer that.

The COURT. Well, let him answer that, if Leeman had indicated by the 16th——

Mr. BINKLEY. Yes.

The COURT. —whether or not he was willing to testify for the government, did he make any such indication.

The WITNESS. It is my understanding that he was at the time willing.

The COURT. He was or was not?

The WITNESS. Yes, he was.

Mr. QUILLEN. One more question, if the Court please.

EXAMINATION

By Mr. QUILLEN:

Q. Now, Mr. Norwood, those interviews conducted with Mr. Leeman dealt primarily with this case in which he and these other six people had been indicted, is that true?

[582] A. That's true.

Q. And it was not an investigation of any continuing criminal activity on the part of Mr. Leeman, was it?

A. What do you mean by "continuing"?

Q. Well, that he was still allegedly engaged in some crime?

A. You mean that he was at that time engaged in it?

Q. Yes.

A. No, sir.

Q. And it wasn't directed to any continuing criminal activity on the part of Eugene Beard?

A. No, sir.

Q. Mr. Beard had of course been in jail since about the 23rd of September?

A. It was my understanding that he had been in jail since this time.

Mr. QUILLEN. That's all.

EXAMINATION

By Mr. MERRITT:

Q. Mr. Norwood, did you and I, did you ever hear about any FBI agents getting together themselves or with the U.S. Attorney in an effort to question Mr. Leeman about what his relationship was with his attorney or to get him to talk about what he may have heard from his attorney about what his [583] attorney's relationship was to some other defendant? Did you ever hear any planning or anything about that?

A. None whatsoever.

Q. Did you ever hear any effort made by the U.S. Attorney's office or any other FBI agent to find out what the defense strategy or to find out anything about the strategy, the finances or anything of that nature?

A. No, sir.

Mr. MERRITT. That's all.

The COURT. Well, that's all, Mr. Norwood.

[Witness excused.]

DARRELL L. HAMAR, a witness called to testify in the pre-trial hearing, after having first been duly sworn, was examined and testified as follows:

EXAMINATION

By the COURT:

Q. You are an FBI agent?

A. Yes, sir.

Q. Are you assigned to the Middle District of Tennessee?

A. Yes, sir.

Q. How long have you been so assigned?

A. Approximately two and a half years.

[584] Q. Have you participated in the investigative work in connection with the case presently on trial in this Court?

A. Yes, sir, I have.

Q. In connection with that work of investigation, have you had occasion to interview the defendant Leeman?

A. Yes, sir, on one occasion.

Q. On one occasion?

A. Yes, sir.

Q. Were you present on any other occasion when he was interviewed by someone else?

A. No, sir.

Q. Who was present on the occasion that you speak of?

A. Agent Henderson Hillin of the FBI.

Q. Where did this take place?

A. In an FBI automobile at Leeman's residence on Sentinel Drive here in Nashville.

Q. And can you give me the date of that?

A. October 10, 1967.

Q. October 10, 1967?

A. Yes, sir.

Q. Who did the questioning of the defendant at that time?

A. Mr. Hillin did most of the talking.

Q. Was he advised of his rights at that time to [585] have a lawyer present?

A. Yes, sir.

Q. Was he advised of the right not to make any statement?

A. He was advised of all of the rights, Your Honor, included in the normal, standard FBI rights form.

Q. Did he make a statement at that time?

A. No, sir, he did not.

Q. Was he interrogated at that time about any facts that he had learned about, acquired knowledge of, from Mr. Quillen, his attorney?

A. No, sir.

Q. Or any facts that Mr. Quillen had conveyed to him that Quillen had in turn derived from his other client, Beard?

A. No, sir.

Q. Did he convey any information that Leeman himself had learned through Quillen about the relationship existing between other defendants and their respective lawyers?

A. No, sir.

Q. I'll ask you to examine the statement which I now hand you and ask you if that is a fair summary of the interview which occurred on the date that you have mentioned, October 10, 1967, between you and Mr. Hillin, and Mr. Leeman; defendant Leeman?

[586] A. Yes, sir, it is.

Q. As far as you know, did he give any other information other than that contained in this statement?

A. No, he did not.

Q. All right. Do you know of any effort in the investigation of this case on the part of the United States Attorney's office or on the part of the office of the Federal Bureau of Investigation to obtain any information from—that grows out of the attorney-client relationship between any of these defendants and their lawyer?

A. No, sir.

Q. Has there been any effort to your knowledge made to acquire information about the plans which the defendants have to defend this case, any particular defense that they plan to offer or witnesses they plan to use or anything of that sort?

A. No, sir. No, sir.

The COURT. All right, who wants to go first over here?

Let's get along as quickly as we can.

EXAMINATION

By Mr. QUILLEN:

Q. Mr. Hamar, you say you only conducted one interview with Mr. Leeman?

A. Yes, sir.

[587] Q. Do you know—let's see, that was on October the 16th, was it not?

A. No, sir, it was on October 10th.

Q. And Mr. Hillin was with you at that time?

A. Yes, sir.

Q. And did that take place at Mr. Leeman's home?

A. Yes, sir, in front of his residence.

Q. Did Mr. Leeman call you to come to his home?

A. No, sir.

Q. Now you knew that Mr. Leeman had been contacted by agents at his home on October the 4th, when you went there on the 10th, didn't you?

A. No, sir, I did not.

Q. You didn't know anything about any agent having previously talked with him since this indictment?

A. I knew he had been previously contacted, but not what date or where.

Q. Who initiated that first contact, if you know?

A. I don't know.

Q. It wasn't you?

A. No, sir.

Q. Have you conducted any interviews of William Eugene Beard since this indictment?

A. Yes, sir.

Q. Where did you conduct those interviews?

[588] A. At Lebanon and Carthage; I believe it was Carthage.

Q. While he was in jail on both occasions?

A. Yes, sir,

Q. Now were you present when anybody made a statement to Beard to the effect that I wasn't representing him, that somebody—that I was representing somebody else?

A. No, sir,

Q. Now these statements that you have handed to the Court, it's not a complete verbatim statement of everything that John Leeman told you about the case?

A. Yes, sir, to my knowledge, it is.

Q. Verbatim?

A. No, sir, it's not verbatim.

Q. There are some omissions, aren't there?

A. Nothing that I know of relating to this case.

Q. Now of course what he did tell you, you do not know whether that was of his own personal knowledge or whether

it was matters that he had picked up from some other source, do you?

A. He told us nothing on the interview.

Mr. MERRITT. He already stated that he——

The COURT. He didn't tell him anything on that day.

Mr. QUILLIN. I mean on the date that he did [589] interview——

The COURT. Well, according to this, I mean I don't know, according to the statement, he didn't.

By Mr. QUILLEN:

Q. On October the 10th, when you interviewed Mr. Leeman, you don't know whether he was telling you of his own personal knowledge or whether he was telling you based upon what somebody else told—might have told him?

A. On October the 10th, Mr. Quillin, he told us nothing; that's the only time I interviewed him.

Q. It was that day—I beg your pardon, it was then—you made arrangements with him at that time though to come and talk to Mr. Merritt, is that right?

A. We didn't make arrangements; he told us that he did not want to talk to us, and he said, I want to know who is prosecuting me. We told him, one or the other of us told him that all we did was investigate the case, the United States Attorney was the—was representing the United States government as far as court was concerned, and he said, maybe that's the guy I ought to talk to. We said, fine, that's up to you.

Q. Did he discuss with you anything as to what he might—what favor he might receive in return?

A. No, sir.

Mr. QUILLIN. Nothing further.

[590] The COURT. All right, anything, Mr. Wilson?

EXAMINATION

By Mr. WILSON:

Q. At the time you interviewed the defendant Beard in the Carthage jail and at the time that you interviewed the defendant Beard in the Lebanon jail, did you use the information that you had obtained from the defendant Leeman in determining the authenticity of the statements made by Beard?

Mr. MERRITT. I object to that, the FBI doesn't determine the authenticity of statements; that's a question he just can't answer.

The COURT. I thought the witness said he didn't get any information from Leeman.

Mr. MERRITT. Yes, sir.

Mr. WILSON. He interviewed Beard.

The COURT. That's right, but he didn't get information from Leeman.

Mr. WILSON. Certainly they pass around these little papers.

The COURT. You better ask him.

By Mr. WILSON:

Q. Did you have in your possession information obtained from Leeman in the interview of Beard to determine the correctness of the statements obtained from Beard?

A. No, sir, I did not.

[591] Q. Did you have knowledge that had been divulged to you from the other agents as to Leeman's statement in order to be able to determine how to question Beard?

A. No, sir, I did not.

Q. You mean to tell me that——

Mr. MERRITT. Yes, sir, that's what he told no. Now don't ask the same question again. That's right.

The COURT. Well, let him——

Mr. WILSON. I don't believe there's any secrecy among these FBI agents; they cooperate.

By Mr. WILSON:

Q. Was there any reason why if you were going to interview Beard after there had been an interview of Leeman who had been talking ever since the 4th of October that that information wouldn't be used?

A. I interviewed Mr. Beard on October 2, October 4, and October 11; I was not present at any interview with Mr. Leeman prior to October 10th. I knew that he had been contacted; I did not know the developments from this interview, and I had none at my disposal on any interview of Beard.

Q. At any time you interviewed Beard, were you aware that the defendant Leeman had been making statements against his own interest?

[592] Mr. MERRITT. He just got through saying the last time he interviewed Beard was October the 11th. He couldn't have made statements.

The COURT. Well, let him answer.

The WITNESS. Could I have the question?

Mr. WILSON. Read it back.

The REPORTER [reading]. At any time you interviewed Beard, were you aware that the defendant Leeman had been making statements against his own interest?

The WITNESS. No, sir, I did not.

By Mr. WILSON:

Q. Did anyone ever apprise Beard in your presence that Leeman was now talking?

A. No, sir.

The COURT. Now there's no statement involved as far as I know up to this point obtained from the defendant Beard, is there?

Mr. WILSON. Sir?

The COURT. I say as far as I have been advised, there's been no statement obtained from the defendant Beard.

Mr. WILSON. Yes, we have just been recently advised that the defendant Beard has made statements to the Federal Bureau of Investigation.

The COURT. Well, I knew nothing about that.

[593] Mr. WILSON. I knew the Court did not, but that's the reason for my questions here, because they can take the two of them and play them one against the other.

The COURT. All right, that's all, Mr. Witness.

Mr. MERRITT. I just wanted to ask him one thing.

EXAMINATION

By Mr. MERRITT:

Q. Was there ever any discussion among the FBI agents or did you ever hear anything at all about any plans on the part of the federal government to put a spy into the councils of the defense or get Mr. Leeman or anybody else to find out what the defense was doing?

A. No, sir, definitely not.

Q. Anything remotely like that?

A. No, sir.

The COURT. All right, that's all.

[Witness excused.]

HENDERSON HILLIN, JR. a witness called to testify at the pre-trial hearing, after having first been duly sworn, was examined, and testified as follows:

[594] EXAMINATION

By the COURT:

Q. Mr. Hillin, you have already identified yourself for the record, and I have been furnished with the summary statements representing summaries of various interviews by FBI agents, and the U.S. Attorney, with the defendant Leeman, and I believe that I can find in here every statement except the—a statement covering October the 11th, 1967, I don't believe that's in there. Maybe I overlooked it or something. See if you can find that.

Mr. MERRITT. May it please the Court, I'm not sure that the FBI conducted——

The COURT. I have here on my notes October the 11th, 1967, that Leeman was interviewed in the U.S. Attorney's office.

Mr. MERRITT. Well, that's partially correct. He came up to my office and wanted to talk to me about the possibility of being a government witness, but there was no—he didn't give any information about the case.

The COURT. He made no statement at all at that time?

Mr. MERRITT. No, sir. No, sir.

The COURT. All right, that explains that situation.

[595] By the COURT:

Q. Now what about—going back to the 4th, there's no statement there for the 4th.

A. Yes, sir, there is.

Q. There's one there?

A. Yes, sir, there is one for the 4th and I call your attention to it. This date here.

Q. Down at the left-hand corner at the bottom?

A. Yes, sir, that's the date of the investigation.

Q. That's the statement I referred to a moment ago when he stated that he had an attorney, Mr. Quillen, who advised him not talk to any of the FBI agents, is that correct?

A. That's correct, sir.

Q. All right. Now let's see. That's the—now there's no interview with him on September the 26th, date of indictment or when he was fingerprinted, no interview then?

A. No, sir, we fingerprinted him.

Q. October the 4th, October the 10th, we have that, and the 11th has been explained. Statement for the 16th, the 24th, and the 31st. All right.

Now I think that's all I have to ask him. Any further questions from anybody?

Mr. MERRITT. I just want to ask Mr. Hillin this question.

[596] EXAMINATION

By Mr. MERRITT:

Q. Mr. Hillin, you are the FBI agent who is in charge of this case for the FBI, is that right?

A. That is correct, sir.

Q. And you and I have had frequent conferences about this case over the course of the last few weeks?

A. Yes, sir, that's correct.

Q. And you have had frequent conferences with other FBI agents about the case?

A. That's correct, sir.

Q. Has there ever been any discussion of any kind whatsoever about putting somebody into the councils of the defense to try to find out what they are talking about?

A. No, sir, emphatically not.

Q. Any effort to get anybody at all to find out what the defendants and their lawyers were talking about or how they were going to defend the case or anything?

A. No, sir.

Mr. MERRITT. That's all.

EXAMINATION

By Mr. BATEMAN:

Q. Mr. Hillen, you had no way, I presume, of knowing what information Mr. Leeman may or may not have had [597] in his own mind that he would not have had but for his relationship with his attorney, is that a true statement?

A. You would have to rephrase it before I could analyze it.

Mr. WILSON. Let it be read back. On behalf of my client, I want it read back just as it is. I don't think it ought to be altered.

The COURT. All right, read it back.

The REPORTER [reading]. Mr. Hillin, you had no way, I presume, of knowing what information Mr. Leeman may or may not have had in his own mind that he would not have had but for his relationship with his attorney, is that a true statement?

The WITNESS. I don't know what was in Mr. Leeman's mind. I don't understand the question, Your Honor.

Mr. QUILLEN. Read it to him again.

Mr. MERRITT. He said he didn't understand the question.

The COURT. Can you clarify the question?

Mr. MERRITT. I don't understand it either.

Mr. WILSON. He's having trouble with the answer.

By Mr. BATEMAN:

Q. The question is, you have no way—is this [598] not a true statement, that's the question. Here's the statement: isn't it true that you have no way of knowing what information Mr. Leeman may have had which he would not have had except for his relationship with his attorney?

Mr. MERRITT. I understand it; I'll stipulate——

Mr. BATEMAN. I don't want him to stipulate; I want the witness to answer this question.

The WITNESS. I don't know what was in his mind.

By Mr. BATEMAN:

Q. That isn't the question.

A. I have no way then to answer your question.

Q. So likewise you don't know, do you, what his motivation may have been or what he may have been motivated to do with respect to cooperating with the government by virtue of information that he had because of his relationship with his lawyer?

A. You'll have to analyze that question for me too, Mr. Bateman.

Mr. MERRITT. We'll stipulate that he doesn't know what his motivation was, may it please the Court, had no way of knowing what his motivation was.

The COURT. I'll let him answer it, maybe he knows.

The WITNESS. I don't know his motivation, Mr. Bateman.

[599] By Mr. BATEMAN:

Q. Do you know whether his behavior in cooperating with the government was influenced or caused in any way by information he might have obtained through relationship with his lawyer?

A. No, I don't know of it.

Q. Now these later reports of the interviews with Mr. Leeman, were they dictated by you or prepared by you?

A. Some of them were.

Q. And as agent in charge of this particular investigation, you are familiar with all of the reports of interviews with Mr. Leeman?

A. That's correct.

Q. Did you obtain any information from Mr. Leeman relative to a shotgun and its possession by possibly some of the other defendants on any particular night in connection with the investigation?

A. There's none in those statements.

Q. I understand that. My question is did you obtain any such information?

A. Yes.

Q. Do you have to have approval to answer these questions?

Mr. MERRITT. He wanted to see if I was going to object, I imagine.

[600] The WITNESS. The answer is yes.

By Mr. BATEMAN:

Q. And that does not appear in your reports?

A. No, sir.

Q. And that is considered—or was considered a significant matter for investigation in connection with this case?

A. This interview took place after that information was requested to be furnished.

Q. My question was the matter of the shotgun was considered a significant thing or item to be investigated in connection with this case?

A. It is of importance.

Q. Yes, sir, and information was obtained from Mr. Leeman about this important matter by you and it doesn't appear in any report of investigation.

Mr. MERRITT. It wasn't obtained by him; I've already stated he called me on the telephone.

The COURT. It came to Mr. Merritt according to the representations made to me and then presumably from Merritt to Hillin.

By Mr. BATEMAN:

Q. Is there any report anywhere in the FBI file containing this information about the shotgun?

A. Yes.

[601] Q. But that is not a report of interview with Mr. Leeman?

A. Yes. This interview that—this information was furnished after these were furnished to the Court.

The COURT. After these statements were furnished?

The WITNESS. That's right, sir.

By Mr. BATEMAN:

Q. In the past few days?

A. That would be a fair assumption.

Q. In other words, after Mr. Leeman's position had been disclosed?

A. That would be a fair assumption.

Q. Is it a fact?

A. I don't know whether his position is—what do you mean his position has been disclosed?

Q. I mean his position, operating as a government informant while posing as a defendant with an agreement to dismiss his case.

Mr. MERRITT. I object to that; he was not operating as a government informant.

The COURT. I'll let the facts speak for themselves.

[602] EXAMINATION

By Mr. QUILLEN:

Mr. Hillin, how many interviews have you conducted with Eugene Beard since he was indicted?

A. Mr. Quillen, to the best of my recollection, I've talked to him once. I think that's correct. That was on October 11th.

Q. Where was that interview conducted?

A. As I testified the other day, the Carthage jail, Smith County jail.

Q. Now, on two occasions between the time of his indictment and October the 11th, did some of the other officers working with you in this case, that is FBI agents, contact him at the Wilson County jail?

A. I have information that they did.

Q. Do you know what dates and how many times they did?

A. I don't recall the specific dates, but they were between September 26th and October 11th, as I understand.

Q. Now at the time that Mr. Beard was in the Wilson County jail, he was in there with other prisoners, was he not?

A. I never saw Mr. Beard in the Wilson County jail.

Q. Do you know whether or not he was there with [603] other prisoners?

A. No, I don't know.

Q. When you conducted an interview with him at the Smith County jail, some three or four days after he had been transferred there, is that right?

A. That is correct.

Q. And he had been held there in solitary confinement during that time?

A. I think the sheriff indicated that he had not been, that he was alone, but he was not in solitary confinement.

Q. That he was in a cell by himself?

A. Alone.

Q. And of course he did make some statements at that time to you?

A. That is correct.

Q. However, you had not obtained any statements from him on the interviews at the Wilson County jail before that time?

A. No, sir. I hadn't talked with him there.

Q. Well, who had, do you know?

A. I think Mr. Hamar had talked with him.

Q. Mr. Hamar hadn't obtained a statement from him there at the Wilson County jail?

A. To the best of my recollection, he had not.

[604] The Court. Are you going to offer any evidence of statements made by Beard?

Mr. Merritt. Yes, sir, and I've given every single one of them to Mr. Quillen, and this is the biggest waste of time I ever heard.

The Court. I'm sure—I believe I reserved ruling on that whether to suppress that evidence.

Mr. Merritt. No, sir—that's right, you said it would be reserved to the time of trial.

The Court. You'll probably want to raise the question at that time, but I don't see how this bears on the question——

Mr. Quillen. It's just a matter, if the Court please, of a continuing interrogation by both those, and it seems just to be this simple, those who have the will to resist have the advantage of a constitutional right; those who don't have, are being deprived. I think it's discrimination.

The Court. I think it's something I'll have to pass on when you make a motion to suppress the evidence.

Mr. Merritt. I don't want to let that pass, may it please the Court. It's an unfair statement. The defendant himself

wanted to talk to the FBI and that's already been brought out and is on the record.

Mr. QUILLIN. After a course of treatment that [605] was conducive to it.

The COURT. Course of treatment?

Mr. QUILLEN. Remove him from where he had——

The COURT. Talking about Beard?

Mr. QUILLEN. Yes, sir.

The COURT. We are not inquiring into that. The admissibility of any statements made by him will be handled at the trial.

The WITNESS. Your Honor, may I interject something?

The COURT. Yes, sir.

The WITNESS. I would like to point out for the record that the FBI was sent there, we went there at the defendant's request. He was fully advised of his constitutional rights, he was not subjected to any lengthy interrogation, he was advised of his constitutional rights.

The COURT. Talking about Beard?

The WITNESS. Yes, sir.

Mr. QUILLEN. Since he's got that in.

By Mr. QUILLEN:

Q. You do not know what happened before you were sent for, do you?

A. No, sir.

Q. And you do know that previous attempts to [606] interview him had not been fruitful, that is between the time of the indictment at the Wilson County jail?

A. The two interviews were not fruitful.

Q. That's right. Now, Mr. Hillin, is the FBI investigation pertaining to the involvement of a shotgun in this case on trial, is that still being explored by your office?

A. That is correct.

Q. And it's in pursuit of something that came to your attention through John Leeman subsequent to the indictment, isn't it?

A. Information about a shotgun came the FBI's attention from another source, Mr. Quillen.

Q. When did it come to your attention?

Mr. MERRITT. We're talking about two different shotguns.

Mr. QUILLEN. I'm talking about the shotgun that may be involved in the count eight of this indictment, that is the killing.

Mr. MERRITT. You are going to have to be more specific. Are you talking about the Ethridge shotgun?

The WITNESS. Was that the shotgun? Maybe we are talking about two shotguns.

Mr. QUILLEN. We well might be, I'd love to know whether we are talking about one or the other.

[607] The COURT. I'm not going to try this case now. It's going to be tried before a jury. I want to know if there's been any breach of a confidential attorney-client relationship.

From the information laid before me, this Ethridge shotgun was something that Leeman knew about of his own knowledge before an indictment was ever filed in this case.

What shotgun are you talking about?

Mr. QUILLEN. I'm talking about a shotgun that may or may not have been somewhere out in the Prosperity Community sometime the 21st or the 22nd of September.

The WITNESS. What was your question, Mr. Quillen?

By Mr. QUILLEN:

Q. Are you pursuing an investigation pertaining to that aspect of the case?

A. To a shotgun, that is correct.

Q. That may or may not have been out in the Prosperity Community, that may have been out in the Prosperity Community on the 22nd or 23rd?

A. That's right, it had nothing to do with John Leeman, this came from another source.

Q. You didn't get that information from Mr. Merritt?

[608] A. This case from another source.

Q. Will you identify the source?

A. No, sir, I will not.

The COURT. Do you want to ask him any questions?

Mr. BINKLEY. I would like to ask a couple of questions if I might.

EXAMINATION

By Mr. BINKLEY:

Q. Mr. Hillin, you were asked by Mr. Merritt something to the effect if you had ever had a discussion about Mr. Leeman being a spy in the camp of the defendants, and I believe you answered "emphatically not".

A. That's correct.

Q. In regard to that, I would like to ask you at what time Leeman indicated to your satisfaction that he wanted to be a witness for the government?

A. Leeman has never told me that he wants to be a witness for the government. He's furnished information, but he has never told me that he wanted to be a witness for the government.

Q. And when was the last interview that you had with Leeman?

A. I was present at the interview with Leeman on the night of November the 6th.

[609] Q. Well, prior to—do you know of your own knowledge when Mr. Quillen was advised that Leeman would be testifying for the government?

A. No, I don't.

Q. Well, did you ever have any discussion with the attorney general concerning Leeman's testimony?

A. We have made available to the United States Attorney copies of information furnished by Leeman. These copies——

Q. Are you saying this is just an independent investigation by the FBI, you didn't coordinate this with the attorney general's office at all?

A. We have discussed this carefully, the investigation carefully with the attorney general's office.

Q. But you have never had any discussion concerning Leeman's relation with his attorney during the time you were questioning him?

A. We have been very careful at all points, as I discussed, not to break or violate the attorney-client relationship.

Q. But you never advised the attorney that you were conducting this investigation, or you never advised the attorney of any of the meetings you were having, did you?

A. You are talking about Mr. Quillen?

Q. Yes.

[610] A. No, we did not clear any interview with Mr. Quillen.

Q. And as far as you know, no communication was made to Mr. Quillen until Mr. Merritt had advised him that Leeman would be a witness for the government?

A. The FBI would not communicate with a defense lawyer.

Mr. BINKLEY. That's all.

The COURT. All right, that seems to be all.

[Witness excused.]

The COURT. Now the statements made by Mr. Merritt, the other day and today, I have taken as statements made by the officer of the Court, and I did not formally place him under oath. If any defendant desires that he be placed on the stand formally to make a statement under oath, I'll be glad to do it. It will just take time.

Mr. WILSON. I do not have any such.

Mr. QUILLEN. I don't desire to have it under oath.

Mr. WILSON. I do have another matter—

The COURT. Any other defendant want it under oath?

Mr. BATEMAN. Certainly not.

Mr. BINKLEY. No, sir.

[611] The COURT. Show that is waived.

Mr. WILSON. For the purpose of this hearing, I do not believe that we could get to the entire truth of this matter without having the defendant Leeman placed upon the witness stand to compare his analysis of what he was doing with the skilled interpretation of the Federal Bureau of Investigation.

The COURT. That may be but he's going to be on the stand and is going to be interrogated, I assume, from the representations made to me, and at that time the entire matter can be gone into with him possbly in the absence of the jury.

I don't see—since we are going to hear his testimony later and it will be an exhaustive examination, I'm sure, with the entire matter, that that can be developed at that time.

If there is any breach of fiduciary relationship or attorney-client relationship developed by his testimony, I might have to take drastic action. If the government is willing to take that risk, I'll go ahead on that basis.

Mr. MERRITT. Sir?

The COURT. Are you willing to take that risk?

Mr. MERRITT. Sir?

The COURT. That Leeman might testify that, [612] after the trial has been underway and the jury impaneled, that he will make a breach of the attorney-client relationship?

Mr. MERRITT. Yes, sir, we will.

The COURT. You understand if it does show up, and he admits he has been, I may be in the position that I may have to dismiss the indictment?

Mr. MERRITT. Yes, sir, but there hasn't been any breach.

Mr. QUILLEN. I think the Court needs to know that I still have a relationship with that man.

The COURT. Is there any way I can disconnect you from him?

Mr. QUILLEN. I wish there was, but I do think the Court ought to realize that predicament.

The COURT. I can't help what connection you have with him in other litigation.

Mr. QUILLEN. What's troubling me is the continuing, if I interpret the case in CJS correctly, that I have some continuing duty.

The COURT. Not in this case, I'm relieving you and did specifically of any obligation whatever, and I assume that when you cross examine, you will take advantage of any information you gained from him.

[613–614]

[615]

The COURT.

Well, I think that we have had a pretty full development of this matter that has come up, and there's been a further motion filed today to suppress the evidence of this witness.

I think what I'll do at this time will be to overrule the motion made to dismiss the indictment and reserve ruling at this time on the motion to suppress the testimony of this witness until we get deeper into the case.

[616–628]

[629] November 14, 1967

Second day of trial

(At 9:15 o'clock, Court was reconvened pursuant to the adjournment, and the following further proceedings were had:)

[630–688]

[689]

The COURT. I'm thinking about this in view of the time that this is taking, to examine each one of these separately with twenty-six challenges and thirty-six on the other, peremptory challenges in addition to those who might turn up for cause; that this is going to be an interminable process, and in the interest of expediting the selection of the jury, I'm thinking

about going back to the system of filling the box and then allowing counsel to interrogate the members of the jury, keeping it within fair bounds.

You know, you have seen now, from the way I've examined the prospective members of the jury, plus the suggestions that I received from you, which incidentally have been very good, I've adopted practically all of them, I believe if you could conduct your voir dire along those lines and keep it within that compass, give or take a few questions, depending on the situation, it seems to me that that would greatly facilitate the selection of the jury, and I don't believe it would work any injustice on anyone, because I'm [690] just frank to say that having examined the jurors that I have so far in here, it's been very few up to now, but neither one indicated the slightest—gave the slightest indication that any publicity had colored his thinking about this case.

Mr. WILSON. Well, one of those——

The COURT. I just don't believe that this is the type of widespread, saturated type of intensive coverage of a case that could bear down upon a person's mind and just sway him one way or the other.

Mr. QUILLEN. Well, if the Court——

The COURT. And that's indicated by the answers I've received.

Mr. WILSON. One of those gentlemen, if Your Honor please, was a lawyer who said he was a farmer, and the other was a regular member of Your Honor's panel, of course, who has regularly known not to allow himself to be swayed one way or the other.

Many of these people, though, on this supplementary panel that we have here today who possibly have never served on a jury in their life——

The COURT. But there's been no publicity, you have had one editorial, I believe, from the Wilson County paper that expressed some view of personal opinion about the case, but there's been no editorializing on this case that I've seen in—— [691] Mr. WILSON. Yes, if Your Honor please, the Sunday supplement published an entire page on it on one day, and the Nashville Tennessean——

The COURT. You mean they expressed an opinion about the guilt or innocence of the defendants?

Mr. WILSON. No, sir, they did not, but they expressed matters in there that will be matters of proof and some of it of course may not be capable of being proven.

It's my experience in the past that most people believe what they read in the newspaper.

The COURT. That's not my experience. I don't think that people——

Mr. WILSON. In the circle Your Honor travels in, possibly not, but in the circles of the average laity——

The COURT. I think the American people, average American today is far more independent in his thinking when it comes to reading newspapers than ever were before. I believe you are right about that.

Mr. QUILLEN. We had last evening on two news programs at least—two of the television stations, I understand——

The COURT. Let's get along with this case. I've got to think of the expeditious——

Mr. MERRITT: I want to take something up on that.

[692] The COURT. I'll go along examining the jurors separately a while longer to see if we get any pattern of influence by publicity, and if it develops that there is no such pattern, I'm going to the other system in order to expedite it.

Mr. MERRITT. I want to take something up. I think it's a serious matter and ought to be in the record. Mr. Quillen just mentioned some more publicity last night on television, and in the newspaper, and I have here the newspaper for last night, Nashville Banner, and this morning's paper. The defendants have made motions for a change of venue in this case, and there has been a great deal of moaning at the bar about prejudicial, unfair newspaper publicity, and then yesterday afternoon, may it please the Court, Mr. Quillen filed a motion and requested that it be taken up in chambers outside of the hearing of the press, and it's my information that he then leaked a great deal of the information that took place in chambers to the press, and thereby brought about the article which appears in the Banner and a part of what appears in the Tennessean this morning, and I think that should be stated for the record.

When a man—when a defendant makes a motion for change of venue and then supplies information to the press which then appears on the front page of the newspaper, I think there's somewhat of a credibility gap.

[693]
[694]

Mr. QUILLEN. If Your Honor please, I think I did mention through someone who was a member of the press what the Court's ruling was on these motions which——

The COURT. Yes, I had members of the press come to me and tell me what my ruling was in the case soon after the close of the hearing.

Mr. QUILLEN. Perhaps I shouldn't have done it, however, I did think it was a matter that would be reflected in the file of the case without any—that would be available to them. I haven't leaked anything to them that would not have been available to them in the files.

The COURT. My rulings would not have been, because I made those rulings in the closed hearings, and I didn't intend for that to be disclosed for the simple reason that it would have disclosed the nature and character of the closed hearing which was requested by the defendants specifically.

[695–708]
[709]

Mr. MERRITT. Mr. Beasley is entirely satisfactory with the government.

The COURT. All right, now let's see, what order—I had a list, a statement here.

For the defendant Georgia Ethridge first. That's the order we agreed on yesterday.

Mr. WILSON. I thought we had agreed that inasmuch as I represented these three defendants and Mr. Quillen and I had the majority of the challenges to be divided between us that we would let those who had the minority, that would be Mr. Bateman representing——

The COURT. Well, I have it in a certain order.

Mr. WILSON. They all agreed to it.

The COURT. We will go to Bostic will be the next, following the order in which they are named in the indictment.

[710] Mr. BINKLEY. If Your Honor please, we will excuse this juror.

The COURT. All right, this juror may be excused until you are notified further to report back by the clerk, you will be excused.

Mr. MERRITT. May it please the Court, I don't want to delay and all, but we are not getting anywhere very fast. I think bringing twelve members into the box and let the lawyers——

The COURT. I think that's what I'm going to have to do.

Mr. MERRITT. We will be here two or three weeks.

The COURT. I don't see any way to ever select a jury going this way, and there's no indication of any adverse effects on account of publicity. I just don't think you're going to find that to be the pattern at all in this case, and the fact that Mr. Quillen yesterday was willing to openly announce to the news reporters what the Court ruled on a matter that was supposed to be in secret session is a strong indication that there's no real feeling here on the part of counsel that publicity is an important factor in this matter.

So let's fill up the box. Call them in order.

* * * * * *

[711–792]

[793]

Mr. BINKLEY. May it please the Court, ladies and gentlemen, my name is Tom Binkley. I represent James Herman Bostic sitting right over here. You have been asked questions on articles you have read in the newspaper and items on television concerning the offenses charged here today. I would like to ask you further. I believe all of you with the exception of Mrs. Turman testified that you had read something in the paper or heard something on televsion, and I'm sure that you realize, the Court has instructed you that the defendants come in here with a presumption of innocence.

I would just like to ask you from what you have read and what you have heard, are the defendants in a position from which you have read that they are going to have to give you some evidence or to give you some proof to overcome any opinion you might have from what you read or heard?

I see part of you shaking your heads. Are all of you of that same frame of mind, that what you have heard and read is not influencing your mind in any way, start this trial and hear the evidence with a completely open mind?

Have any of you ever been robbed?

Have any of you ever had members of your family who have been the subject of a robbery?

Mr. ROBERTS. Been robbed.

[794] Mr. BINKLEY. Sir?

Mr. ROBERTS. I've been indicated in a robbery, I mean held up in a place. Is that the question?

Mr. BINKLEY. Well, because of that, do you have any preconceived notions about people who are charged with committing a robbery, would the fact that you had been robbed prejudice your mind in any way?

Mr. ROBERTS. No, I don't think so.

Mr. BINKLEY. All right. Have any of you ever been a prosecutor in a criminal case?

Have any of you ever served on a federal grand jury?

Have any of you ever served on the federal criminal jury here before?

Mr. TOLAR. I served a week or two ago.

Mr. BINKLEY. I mean in other terms.

Mr. TOLAR. In no other term but this one.

Mr. BINKLEY. If—I would like to ask you one more question—if you will recall from the Judge's reading of the counts here, there are five counts that these defendants are charged with, and if you will note from the reading, a part of these defendants are charged with causing the death of another person, but part of them are not, and I would like to ask you if the fact that these defendants are being tried together, some with more serious charges, and some [795] with less serious charges, would that bother you in a finding of guilt or innocence on any of the separate counts? Would the fact that there is a more serious charge here bother you in rendering a verdict of not guilty, if it were not—if the defendants were not proven guilty on other counts?

Mr. CARTER. [Indicates by raising hand.]

Mr. BINKLEY. Yes, sir.

Mr. CARTER. I would have to hear the charges re-read or see them in print. From the memory of five charges, I could not—I don't feel I could make a just decision.

The COURT. What was that last answer?

Mr. BINKLEY. He said he would have to see the charges, just from memory, he didn't feel he could make a just decision.

The COURT. Let me put it this way. Count eight in the indictment charges that the defendants Beard and Gary Ethridge caused the killing of the deceased Larry Ferguson. That's count eight.

Now just those two defendants are charged, that is Beard and Ethridge.

Now in other counts of the indictment, other defendants, such as Cole and Self and Bostic and Mrs. Ethridge, are charged with robbing banks or aiding and abetting in the robbery of certain banks.

[796] Now would the fact that Beard and Ethridge are charged with killing a person in any way cause you to have any inability to try these other defendants on other charges of robbing banks fairly and impartially?

In other words, would the mere fact that Ethridge and Beard are charged with causing the killing of a person prejudice you in trying the other charges against the other defendant which do not involve the killing of a person?

Mr. CARTER. No, sir.

The COURT. I think that's what you were driving at.

Mr. CARTER. Yes, sir.

Mr. BINKLEY. Would the rest of you answer that question the same way?

Mr. MERRITT. I take it Mr. Binkley accepts the panel?

The COURT. Well, he hasn't announced yet.

Mr. MERRITT. Just wondered if you accepted the panel. Excuse me. I didn't mean to interrupt you.

Mr. BINKLEY. Mrs. Dismukes, it's called to my attention that you held up your hand when I asked——

Mrs. DISMUKES. I was in Judge Miller's court two years ago.

Mr. BINKLEY. This is the only time you've [797] served?

Mrs. DISMUKES. Judge Gray's Court. I started October the 7th.

Mr. BINKLEY. Did you hear any bank robbery cases during that time?

Mrs. DISMUKES. No.

Mr. BINKLEY. And Mrs. Turman, I'm not very observant. I've been advised that you held up your hand or shook your head on being robbed or having a member of your family——

Mrs. TURMAN. Yes.

Mr. BINKLEY. What were the circumstances? Were you yourself robbed, or a member of your family?

Mrs. TURMAN. Well, they just broke in my house and my husband shot——[balance of answer inaudible].

Mr. BINKLEY. Mrs. Turman, the fact that this happened, would that affect your judgment?

Mrs. TURMAN. No, it's been so long ago, it wouldn't affect it.

The COURT. All right, sir.

Mr. BINKLEY. The jury is acceptable to Bostic.

* * * * * * *

[798–837]

[838]

Mr. BINKLEY. May it please the Court, Mrs. Singleton, and gentlemen of the jury, my name is Tom Binkley, and I represent Mr. James Herman Bostic who is seated right over here.

I would like to get a little information that we didn't get initially.

Mr. Davis, what is your occupation?

Mr. HAMILTON. My name is Hamilton.

Mr. BINKLEY. Mr. Hamilton, what is your occupation?

[839] Mr. HAMILTON. I'm retired.

Mr. BINKLEY. Retired from what sort of work?

Mr. HAMILTON. Truck driving.

Mr. BINKLEY. Have any of you ever been the subject of a robbery? Have you ever been robbed?

Mr. BRAZIL. [Indicates by raising hand.]

Mr. BINKLEY. What was the circumstances, Mr. Brazil?

Mr. BRAZIL. I've got a warehouse that's been robbed several times.

Mr. BINKLEY. Would the fact that this has happened to you cause you to have any feelings that would prevent you from giving a fair trial of somebody charged with robbery?

Mr. BRAZIL. I don't think so.

Mr. BINKLEY. You don't think that would affect your thinking in this matter?

Mr. BRAZIL. No. I'm sure it wouldn't, not my personal problems.

Mr. BINKLEY. And I would like to ask all of you concerning the articles you have read in the paper. I believe most of you have testified that you have read something in the paper, and from what you have read, is this going to require the defendant to come forward and offer some evidence to take any opinion you might have from what you read in the paper [840] out of your mind or are you going to be able to start with everything in balance?

Now you are the only ones who know about that, I'm just asking you if what you have read in the paper is going to cause the defendant, so to speak, to start out with one strike against

him, with something he has to overcome to convince you of his innocence.

I see no answer. I assume that all of you are saying that you are not going to be affected by that in any way.

Have any of you served on other jury panels in federal court prior to this one?

[Show of hands.]

Mr. BINKLEY. On the panels you have served on, have you ever tried a bank robbery case before, any of you?

Have any of you ever served on a federal grand jury?

Have any of you ever worked for a law enforcement agency?

In this case before you, there are five counts that you will be asked to consider, one of the counts charges that two of the defendants here in court caused the death of another person. There are other counts, lesser counts with the other defendants, specifically my client, who is not charged with having anything to do with this death.

[841] Now I would like to ask you if the fact that Mr. Bostic is being tried on a lesser count along with parties that are being charged with causing the death of another one, would hamper your thinking toward Mr. Bostic in rendering a verdict of not guilty if the government didn't prove his guilt beyond a reasonable doubt?

Do you understand my question?

Mr. HARRIS. I don't.

Mr. BINKLEY. The fact that one of the defendants or more than one of the defendants are charged with minor counts and are being tried along with persons charged with causing the death of another person. Would that cause you any difficulty in rendering a verdict of not guilty if you so found on these minor counts?

The COURT. I don't believe the juror—you don't quite understand what he's driving at?

Mr. HARRIS. No, sir.

The COURT. Well, let me see if I can clarify it. If I'm wrong about this, you may correct me.

In count eight, which was read in your presence, two of the defendants are charged with causing the death of a person named in count eight, that is the defendants Beard and Gary Ethridge are charged with causing the death of a person by the name of Larry Ferguson.

Now in other counts of the indictment, other [842] defendants are charged with offenses involving alleged bank robberies, and with a conspiracy to commit bank robberies.

Now would the fact that these two defendants are charged with causing the death of a person make it difficult for you to give a fair trial and to find the defendants in the other counts not guilty if those other counts were not proved against those defendants, since they are not charged in the count involved in the killing?

In other words, would the fact that two defendants are charged with the killing prejudice you in any way against the defendants in other counts who are not charged with the killing?

Mr. HARRIS. No.

The COURT. That's about as simple as you can put it.

Mr. HARRIS. I don't think so.

Mr. BINKLEY. Your Honor, did you charge or make inquiry concerning a defendant not taking the stand?

The COURT. I don't believe I did.

Mr. BINKLEY. I didn't think so.

The COURT. With these jurors.

Mr. BINKLEY. Mrs. Singleton and gentlemen, I would like to ask you just one more question. If a situation should arise wherein any of the defendants should exercise their privilege not to take the stand and testify in their [843] own behalf, could you, after hearing the proof and a proper instructions from the judge, give no inference from this defendant exercising that privilege, or would the fact that the defendant chose not to take the stand so affect you that you couldn't consider all the proof impartially?

The jury is satisfactory.

* * * * * *

[844–872]

[873] November 16, 1967

(Fourth day of trial)

* * * * * *

[874–914]

[915]

Mr. BINKLEY. Thank you.

Ladies and gentlemen, my name is Tom Binkley, and I represent Mr. Bostic who is seated right over here. I've got a few questions that I would like to ask you, and I'll preface my remarks as did the Attorney General, what we are looking for is a fair and impartial jury, and the [916] questions I'll ask you are designed to determine whether you can qualify.

I have several general questions that I would like to ask all of you and first I would like to ask you if you understand that it is the right of a defendant in a criminal case not to take the stand in his own behalf, if he so chooses.

Do you understand that that is the right of the defendant?

And I'll ask you if you also understand that no inference of guilt should be drawn from any defendant who chooses not to take the stand, do you understand that that is the law?

Now I would like to ask you, even understanding that that is the law, I think maybe a lot of times some of us have opinions that if a man is accused of a crime and he doesn't take the stand, that shows he's guilty.

Now are any of you in that frame of mind and of course no one knows that but you, should a defendant in this case choose not to take the stand, would that so prejudice your mind that you couldn't fairly consider the other evidence in the case?

Do I understand by your silence that that wouldn't affect your opinion about it?

All right.

[917] I would like to ask you have any of you ever been the subject or the victim of a robbery?

Have any of you ever had anyone in your family robbed?

Mr. HOLLEMAN. We've had several—of course being in the insurance business, we are involved with them all the time.

Mr. BINKLEY. Mr. Holleman, this fact that you are in the insurance business, and I imagine your company pays theft insurance?

Mr. HOLLEMAN. That's right.

Mr. BINKLEY. And is your work just selling the insurance, or do you also investigate claims?

Mr. HOLLEMAN. No, I don't investigate—we have an adjuster who does that, but we have a general agency, we sell it and service it, I suppose.

Mr. BINKLEY. Your company does pay claims for robberies?

Mr. HOLLEMAN. That's right, sir.

Mr. BINKLEY. Would this fact, thinking about the fact that a company pays claims or having robberies on your mind, do you think that would affect your thinking in this case in any way?

Mr. HOLLEMAN. No, sir.

Mr. BINKLEY. Do you think you could hear the [918] evidence and give all the parties a fair trial?

Mr. HOLLEMAN. Yes, sir.

Mrs. FREY. [Indicates by raising hand.]

The COURT. The lady raised her hand.

Mrs. FREY. My granddaughter had her car stolen one time, but it turned out so nice, it didn't make me have any bad feeling at all. She got the car back with everything she had.

Mr. BINKLEY. Then that wouldn't have any bearing on your thinking?

Mrs. FREY. No.

Mr. BINKLEY. Colonel Darden, I take it you were in the Corps of Engineers?

Mr. DARDEN. Yes.

Mr. BINKLEY. That was your branch of service in the Army?

Mr. DARDEN. Yes.

Mr. BINKLEY. I would like to ask you, colonel, was it a part of your duty in the Army to serve on courts martial?

Mr. DARDEN. I have been on courts martial, yes, sir.

Mr. BINKLEY. And did you serve on courts martial, how often did you do this?

Mr. DARDEN. Not very often. Only two or three [919] times during my career.

Mr. BINKLEY. Was this at the time when you were a colonel?

Mr. DARDEN. The last one was.

Mr. BINKLEY. And did you serve as president of the court martial?

Mr. DARDEN. No; I did not; I was a member of the court, general court.

Mr. BINKLEY. And as a member of the general court martial, you did sit in judgment of someone charged with crime, is that not right?

Mr. DARDEN. Yes, sir.

Mr. BINKLEY. And it is your duty to determine the guilt or innocence and also to determine sentence, is that right?

Mr. DARDEN. Yes, the sentence is recommended, and it is reviewed at several levels.

Mr. BINKLEY. Mr. Luton, you are retired from the Air Force?

Mr. LUTON. Yes, sir.

Mr. BINKLEY. What was your——

Mr. LUTON. I flew for fourteen years, and I was in the United States Security Service the rest of the time.

Mr. BINKLEY. And what did you do in the Security Service?

[920] Mr. LUTON. I was what you call mission supervisor.

Mr. BINKLEY. Let me ask you this. I want to be sure I know what security is, is this police work?

Mr. LUTON. No, no, it was radio monitoring.

Mr. BINKLEY. Did you serve on courts martial boards as part of your duty?

Mr. LUTON. Only once in my life.

Mr. BINKLEY. Let's see, this is Mr. Bledsoe?

Mr. BLEDSOE. Yes, sir.

Mr. BINKLEY. Mr. Bledsoe, I don't believe I heard when you were asked what your employment is.

Mr. BLEDSOE. I was a welder for DuPont Company for thirty-five years.

Mr. BINKLEY. And you are retired at this time?

Mr. BLEDSOE. Yes.

Mr. BINKLEY. Have any of you ever served on another jury at another time here in Federal Court?

Mr. HOLLEMAN. Yes.

Mr. BINKLEY. How long ago was that?

Mr. HOLLEMAN. I believe it's been about three years.

Mr. OSTON. [Indicates by raising hand.].

Mr. BINKLEY. Yes, sir.

Mr. OSTON. About three years.

[921] Mr. BINKLEY. Did you try any—this is Mr. Oston?

Mr. OSTON. That's right, Oston.

Mr. BINKLEY. Mr. Oston, did you try any bank robbery cases when you were on this panel before?

Mr. OSTON. No, I didn't.

Mr. BINKLEY. How about you, Mr. Holleman?

Mr. HOLLEMAN. No, sir.

Mr. BINKLEY. Do any of you know of any reason why you couldn't sit and hear all of the evidence and give both the government and the defendants charged a fair trial?

The jury is acceptable.

[922–984]

[985]

Mr. BINKLEY. Mrs. Englert and gentlemen, my name is Tom Binkley, and I represent the defendant Bostic who is seated here at the table. I would like to ask you a few questions to further assist the Court in determining whether we can have an impartial jury in this panel.

I would like to direct my first question to all of you as a group. I would like to ask you if you are aware that in a criminal case, that the defendant has the right not to take the stand and testify in his own behalf. Does everyone understand that that is the right of the defendant?

Do you also understand that no inference is [986] to be drawn from any defendant not taking the stand? Do you understand that?

Now we are all human, and I know a lot of times people feel like if a man doesn't get on the stand, that's an admission of guilt, and a lot of times you can't take that out of your mind no matter what the Court charges, and I want to ask you now, should any defendant in this case elect to exercise his right not to take the stand, would that be such an inference of guilt as far as your are concerned, that you couldn't give him a fair trial?

Now I assume by your silence that you are saying to me that this will make no difference to you, if any defendant chooses not to take the stand.

All right.

Mr. Ogilvie, you are with a savings and loan association?

Mr. OGILVIE. Yes, sir.

Mr. BINKLEY. And what is your position with this company?

Mr. OGILVIE. I'm the president of the firm.

Mr. BINKLEY. And I believe you said in your capacity with this company, you have received certain instructions and admonishments concerning bank robberies and things of that sort?

Mr. OGILVIE. That's right.

[987] Mr. BINKLEY. Now would the things that you have seen and heard in these admonishments make it difficult for you to listen to the evidence and give these defendants a fair trial?

Mr. OGILVIE. I'm afraid it might.

Mr. BINKLEY. Of course you are the only one that knows about that, and you think that what you have learned about this from these instructions and just the nature of your position would affect you?

Mr. OGILVIE. I'm afraid it might.

The COURT. Well, you say you are afraid it would. I gather from that you are almost certain it would?

Mr. OGILVIE. Yes, sir.

The COURT. All right, I'll excuse you.

The CLERK. Mr. Ogilvie.

Mr. BINKLEY. Now, Mr. Merideth, I'd like to ask you a few questions, and none of us can help how we feel about things, but it is very important to these defendants that we know exactly how the jury feels about this, and you made a statement a while ago that you felt like with all of the law enforcement agencies investigating a matter, and with this many people here, that there must be some guilt.

Now I take it that was preying on your mind when you came in here, wasn't it?

Mr. MERIDETH. Yes, sir.

[988] Mr. BINKLEY. And I want you to think now, can you—I know that you are going to listen to what His Honor charges you—but can you honestly erase that from your mind?

Mr. MERIDETH. Well, I would have to hear the evidence to, you know, pass a judgment where a man—whether I thought he was guilty or not.

Mr. BINKLEY. Yes, sir, but now with what you said about feeling that there had to be some guilt with everything involved, can you sit here right now and presume that every man sitting at this table, and everyone charged with a crime is innocent?

Mr. MERIDETH. Yes, I can do that until proven guilty.

Mr. BINKLEY. Well, are you doing that?

Mr. MERIDETH. Yes, sir.

Mr. BINKLEY. Have any of you ever served on a federal grand jury?

Mr. MERIDETH. (Indicates by raising hand.)

Mr. BINKLEY. You did serve on a grand jury?

Mr. MERIDETH. Not a grand jury, I beg your pardon.

Mr. BINKLEY. In what court did you serve?

Mr. MERIDETH. I served here about two years ago.

Mr. BINKLEY. All right, sir. Have any of you ever been robbed, or any close member of your family been the victim

[989] of a robbery?

Mr. MERIDETH. The only robbery that ever happened to me, we were on vacation in California, and my car was broken into, but that's all.

Mr. BINKLEY. Well, just this thing happening doesn't—that doesn't leave you in such a frame of mind that you would be prejudiced in this case, does it?

Mr. MERIDETH. Oh, no.

Mr. BINKLEY. Have any of you—excuse me.

Mr. HAYES. I had equipment stolen off of my property.

Mr. BINKLEY. I'm just trying to find out——

Mr. HAYES. Not the type of robbery we are involved in here, no.

Mr. BINKLEY. The fact that things have been stolen from your property, does that—does that put you in a frame of mind where you couldn't give anybody a fair trial that's charged with robbery?

Mr. HAYES. No, sir.

Mr. BINKLEY. I'd like to ask all of you, I'm sure that most of you have read that there have been several bank robberies in this vicinity and other vicinities, would this fact that you have heard of things of this sort, would this so affect you that you couldn't listen to the evidence here impartially and give all the parties a fair [990] trial?

This is a six-count indictment, and my client, Mr. Bostic, is charged in three of the counts. One of the counts which Mr. Bostic is not charged in charges that some part of the defendants here have caused the death of another party, and I would just like to ask you, if the fact that my client, Mr. Bostic, is being tried with people charged with a graver offense would prejudice your mind against my client?

The jury is accepted.

[990–994]

[995] November 17, 1967

(Fifth day of trial)

(Whereupon, at 9:15 o'clock a.m., Court was reconvened pursuant to the adjournment, and the following further proceedings were had:)

[996–1023]

[1024]

Mr. MERRITT. I would like for counsel to come forward to the bench if I may, may it please the Court.

The COURT. All right.

(Whereupon, the following conference was had at the bench between the Court and counsel for the respective parties, out of the hearing of the prospective jurors:)

Mr. MERRITT. A number of people are saying that they have fixed opinions about the case, in my [1025] judgment for the sole reason of getting out of jury service.

The COURT. I think that's probably true.

Mr. WILSON. I think so too.

Mr. MERRITT. And I think the Court ought to tell the jury when they are called the importance of jury service, and press upon their minds the responsibilities that go into that so that before they hold up their hands, they've got fixed opinions in order to try to get out of it, they have to feel guilty about it.

The COURT. I think that that's a probability from what is happening here.

Mr. MERRITT. Every one of the Clarksville jurors all of whom I know know each other, because I talked to a man in Clarksville, every one of them say the same thing.

Mr. QUILLEN. Mr. Hayes is——

The COURT. This is the fifth day working on the jury, and this is the first day that any significant number of jurors——

Mr. KNIGHT. It's increased every day too.

The COURT. It's increased every day, they've gotten on to the idea that it's going to be a lock-up jury.

[1026] Mr. QUILLEN. Something else occurred that I would like to bring up at this time. While Mrs. Briley was being questions, the elderly gentleman on the back row, I think, made some statement, and I read his lips, and understood it as to tell him no. I can't be positive about that, but I'm——

The COURT. Well, I'm not a lip reader.

Mr. KNIGHT. Made what statement?

Mr. QUILLEN. Reading his lips at a distance, hampered my hearing, sounded like he said, tell him no.

The COURT. Then you better question him on voir dire.

Mr. QUILLEN. I was hoping the Court would relieve me of that burden.

The COURT. I didn't hear it or see it either one.

[1027-1044]

[1045]

Mr. BINKLEY. Gentlemen, my name is Tom Binkley and I represent Mr. Bostic who is seated over here at the counsel table. I'd like to state at the outset that I agree with what Mr. Merritt has told you concerning your duty as jurors. I consider it not only a duty but I'm sure that you consider it a privilege of citizenship to serve on a jury.

But I think there is one thing that Mr. Merritt didn't go into quite enough. I think even greater than your duty to serve on the jury is your duty to be able to render a fair trial to all the parties, and that's the reason that we are asking questions this morning, and I want to be sure as far as this jury is concerned, that you are not in a position of feeling that your duty to sit on this jury is so great that you will let hardships go by the board that you are going to be thinking about while you need to be concentrating on this trial, and the facts that you are hearing for this prolonged period that we will probably be here, and for that reason, I [1046] would like to ask you again, considering the fact that this jury will be locked up for maybe some three to four weeks, is there any one of you who has a problem that you feel will be pressing on your mind to the extent that you couldn't give the time necessary to the facts involved here?

Now only you know that. I'd like to ask you again if all of you feel that you could sit on this trial and you have no personal hardship or physical handicap that would keep you from concentrating on the fact and the evidence that is presented to you.

[1047]

[1048]

Mr. BINKLEY. All right, is there any other member of this jury that has similar problems or any type problems that you are concerned about?

I accept by your silence you have no problems in that regard.

I would like to ask you if all of you are aware that according to the law, a defendant is not required to take the stand and testify in his own behalf.

Do you understand that to be the law?

And I'll ask you if you also understand that no inference is to be drawn from the defendant exercising this right and not taking the stand. Do you also understand that to be the law?

All right. Now we can't help how we feel about certain things, and even though we know this to be the law, I would like to ask you individually, sitting here, if during the course of this trial any of the defendants fail to—I mean decide to exercise their right not to take the stand, could you accept the instructions of the Court and put no inference to the defendant not taking the stand?

I take it by your silence then if during the course of this trial a defendant chooses not to take the stand, [1049] that you will accept the instructions of His Honor and put no inference of guilt on that.

All right, have any of you gentlemen ever been the victim of a robbery? If so, raise your hand.

Has any close member of your family ever been the victim of a robbery?

Mr. CONNER. A son.

Mr. BINKLEY. How did that occur?

Mr. CONNER. In college, robbed of his possessions in college.

Mr. BINKLEY. Would that affect your thinking in this case in any way?

Mr. CONNER. I don't think so.

Mr. BINKLEY. How many of you gentlemen have served on a federal jury before?

[Show of hands.]

Mr. BINKLEY. Let's see, Mr. Hennessey, when did you serve?

Mr. HENNESSEY. I think it was three years ago.

Mr. BINKLEY. Was that a criminal jury or a civil jury?

Mr. HENNESSEY. Civil.

Mr. BINKLEY. Have you ever served on a federal grand jury?

Mr. HENNESSEY. No, sir.

[1050] Mr. BINKLEY. Mr. Conner, when did you last serve?

Mr. CONNER. Maybe I was thinking along in October.

Mr. BINKLEY. This is on this panel?

Mr. CONNER. That's right.

Mr. BINKLEY. How many cases have you heard since you have been on this panel?

Mr. CONNER. One.

Mr. BINKLEY. What was the nature of that case?

Mr. CONNER. Bank robbery.

Mr. BINKLEY. Would the fact that you have heard the case concerning a bank robbery influence your thinking in any way in this trial?

Mr. CONNER. No, I don't think so. I would try to go by the evidence presented.

Mr. BINKLEY. And the fact that you have sat on a bank robbery trial would have no effect on your thinking in this case?

Mr. CONNER. No, sir.

Mr. BINKLEY. Mr. Scales, I believe you raised your hand.

Mr. SCALES. Yes, I did.

Mr. BINKLEY. Have you sat on a panel prior to this, or just this panel?

[1051] Mr. SCALES. Just this panel in another case.

Mr. BINKLEY. And what type case did you sit on?

Mr. SCALES. Robbery case.

Mr. BINKLEY. Was this the same case that Mr. Conner was on?

Mr. SCALES. No, sir.

Mr. BINKLEY. Would the fact that you have sat on a case involving a similar type charge to this one have any bearing or any affect on your trial of this case?

Mr. SCALES. None whatsoever.

Mr. BINKLEY. And, Mr. King, I believe you raised your hand.

Mr. KING. The same. The same one he was on.

Mr. BINKLEY. The same jury?

Mr. KING. That's right.

Mr. BINKLEY. Would your answer be the same as his?

Mr. KING. That's right.

Mr. BINKLEY. I don't believe I understand what your employment is.

Mr. KING. Contractor.

Mr. BINKLEY. You work——

Mr. KING. Building houses.

Mr. BINKLEY. You work for yourself?

Mr. KING. That's right.

[1052] Mr. BINKLEY. Now, gentlemen, you have heard His Honor read the counts, six-count indictment, the first count being a conspiracy, and then the counts charging taking money from a bank and the last count charging that an individual was killed to keep him from making statements or to keep alleged bank robbers from being apprehended.

Now as I stated at the outset, I represent Mr. Bostic here, and he is not charged with this killing, and I would like to ask all of you if the fact that Mr. Bostic is being tried in the same case where someone is being charged with killing another person would influence your mind should you determine that Mr. Bostic is not guilty of the things that he's charged with?

Would that influence your mind in any way, the fact that he's being tried along with somebody charged with a greater offense?

The jury is acceptable.

* * * * *

[1053–1088] * * * * *

[1089] * * * * *

Mr. BINKLEY. My name is Tom Binkley, Mrs. Crouch and gentlemen. I represent Mr. Bostic sitting here. I don't believe we have any information as to your employment.

Mrs. Crouch, are you employed?

Mrs. CROUCH. I'm a housewife.

Mr. BINKLEY. And what does your husband do?

Mrs. CROUCH. He's a teacher in graduate school at Tennessee State University.

Mr. BINKLEY. Teaches in the graduate school?

Mrs. CROUCH. He's the dean of the graduate school.

Mr. BINKLEY. Yes, ma'am. And Mr. Burton, what is your employment?

Mr. BURTON. I'm retired.

Mr. BINKLEY. And where did you work, sir?

Mr. BURTON. I'm retired from the Veterans Administration.

Mr. BINKLEY. All right. And Mr. Reed, I believe it is?

Mr. REED. That's right, school bus driver and part time farmer.

Mr. BINKLEY. Oh, yes, how long have you been [1090] doing this work?

Mr. REED. Well, this will be eight years.

Mr. BINKLEY. All right, and Mr. Akins, what is your employment?

Mr. AKINS. L&N Railroad.

Mr. BINKLEY. And what is the nature of your employment with L&N?

Mr. AKINS. Maintenance of rails and maintenance.

Mr. BINKLEY. Mr. White, where are you employed?

Mr. WHITE. L&N Railroad, retired.

Mr. BINKLEY. And what did you do when you worked for the L&N?

Mr. WHITE. I was staff assistant to the assistant comptroller in Louisville, Kentucky.

Mr. BINKLEY. And Mr. Williamson, what is your employment?

Mr. WILLIAMSON. Retired from DuPont, Old Hickory.

Mr. BINKLEY. In what department did you work in at DuPont?

Mr. WILLIAMSON. Maintenance.

Mr. BINKLEY. Mr. Draper?

Mr. DRAPER. Employee for DuPont, Old Hickory.

Mr. BINKLEY. What is the nature of your employment?

[1091] Mr. DRAPER. Work in the service department, supervisor.

Mr. BINKLEY. Mr. Joyner, what is your employment?

Mr. JOYNER. I'm retired.

Mr. BINKLEY. Where did you work?

Mr. JOYNER. McClure's Department Store.

Mr. BINKLEY. Here in Nashville?

Mr. JOYNER. Goodlettsville.

Mr. BINKLEY. Mr. McCord, what is your employment?

Mr. MCCORD. Manager of a housing project.

Mr. BINKLEY. For the Nashville Housing Authority here in Nashville?

Mr. MCCORD. Yes, sir.

Mr. BINKLEY. How long have you been employed in that position?

Mr. MCCORD. Fifteen years.

Mr. BINKLEY. And Mr. Lane, what is your employment?

Mr. LANE. I run a restaurant in Springfield.

Mr. BINKLEY. Mr. Morrison?

Mr. MORRISON. I work for the State of Tennessee, Division of Forestry.

Mr. BINKLEY. And Mr. Bruce?

[1092] Mr. BRUCE. Mechanic.

Mr. BINKLEY. And are you working here in Nashville?

Mr. BRUCE. Working for the freight line.

Mr. BINKLEY. Yes, I would just like to ask you a couple of questions. I want to ask if you, all of you, understand the law to be that a person accused of crime has a right not to take the

stand in his own behalf if he so chooses. Do you understand that to be the defendant's right?

Mr. BRUCE. Yes.

Mr. BINKLEY. All of you understand that?

And do you further understand the law to be that if any defendant in this case or any case chooses not to take the stand in his own behalf that no inference shall be drawn from his so choosing, do you understand that?

I'd like to ask all of you, if any defendant in this case chooses not to take the stand, can you follow the law and listen to His Honor's instructions and not take any inference from the defendant so choosing?

Mr. QUILLEN. May it please the Court, excuse me a minute.

Mr. BINKLEY. May it please Your Honor, let me ask a question for clarification. As I understand it, we have six challenges, does this mean that I have one which I have to exercise now or can we just elect——

[1093] The COURT. No, if you want to waive yours, you can pass it on to someone else, a total of six.

Mr. BINKLEY. All right, I'll pass mine on, and this panel is acceptable to the defendant Bostic.

* * * * *

[1094–1113] * * * * *

[1114] * * * * *

The COURT. If you transferred your case to Chattanooga or any other district, there would have to be preliminary motions there, and various features of the case would have to be developed even in another district, and the press no doubt would be there to cover it, and there's just no way that you can cut off all publicity.

You have to reconcile the right of a fair trial with the freedom of the press. You have to make the necessary adjustment, because those are two fundamental, basic rights under our system. In this case I was particularly interested in determining whether or not it would be possible to impanel a fair and impartial jury in view of the publicity which has occurred, and in this case there has been, considering the number of jurors who have been interrogated, there have been a remarkably few in number who have said that newspaper publicity has had anything to do with their thinking until today, strange as it may seem.

A few of the prospective members of the jury, apparently with the idea in mind that this would be a good way to get off of a jury, particularly a jury that was to be locked up, made a statement that they had an opinion derived from publicity, but I've satisfied my mind that you couldn't [1115] get a fairer jury regardless of what district you went to in this case.

Mr. QUILLEN. I don't think we—wouldn't have any local interest in Chattanooga. I don't think they would give it a whole lot of coverage.

The COURT. Most defendants—in fact, it's a constitutional right to be tried in the district and place where the crime occurred, that's written into our constitution. The defendants are accorded that privilege and normally the defendants want to be tried at home and not sent off to a distant land somewhere to face trial. That's the exception rather than the rule.

I just don't believe—certainly this is not a Shepherd case, you don't have any saturation here like you did there, bombardment of editorials and front page comment from the editors, and coming from all parts of the area, just converging on this one case, and highlighting it above and beyond all other cases, making it stand out, identifying it separately.

This publicity in connection with this case has occurred along with publicity in connection with other criminal charges that have been made, and I can't see that this has been inordinately played up or emphasized any more than just as a news item, that here the charges are and the indictment returned by the grand jury, and the banks [1116] were robbed, these particular individuals are charged with the offense.

Mr. QUILLEN. I think the Court——

The COURT. You did have the alleged statement attributed to the deceased which was written up and quoted, apparently that was prior to the time that the federal government had anything to do with this case.

Mr. QUILLEN. I don't think so, I think they——

The COURT. That was represented to me.

Mr. QUILLEN. I think——

The COURT. That the federal government did not release that statement to the press.

Mr. QUILLEN. My information is that the federal agents participated in the initial arrest of William Eugene Beard.

The COURT. However that may be, all jurors have stated that they can disregard that; will disregard it, are capable of doing so if it is not admitted into evidence by the Court, and if it is admitted in evidence, they will not give it any greater weight than if it were never printed in the newspaper, so I don't see any reason for change of venue in this case.

* * * * *

[1117] * * * * *

The COURT. I overrule the motion, and we have spent five days interrogating these jurors, and I'm satisfied it's a fair and impartial jury, as fair and impartial as it's possible to obtain.

* * * * * *

[1118–1129] * * * * *

[1130] Monday, November 20, 1967

(Sixth day of trial)

(At 9:10 o'clock a.m., Court was reconvened pursuant to the adjournment, and the following further proceedings were had in the absence of the jury:)

* * * * * *

[1131–1139] * * * * *

[1140] * * * * *

Mr. QUILLEN. I have been informed by Mr. Merritt that he intends, in his opening statement to the jury to make known the so-called dying statement of Larry Ferguson.

I don't think at this time, from what I know about it, that that's going to be admissible. I think it would be prejudicial to the defendant to have that statement made to the jury, even in an opening statement, if it should subsequently be determined, of course, that it is not admissible at all.

[1141] The COURT. Yes. Will there be objection to the admissibility of this evidence?

Mr. QUILLEN. Yes, sir.

The COURT. In whole or in part?

Mr. QUILLEN. In whole.

Mr. WILSON. In toto.

The COURT. Mr. Knight?

Mr. KNIGHT. May it please the Court, I might say with respect to that, we take the position that first of all as a matter of law, we are entitled to make a full statement of the proof we

intend to offer. We assume that the defendants will have objections to large portions, or portions of the proof that we offer, and it would be our position that we are entitled to refer to it in opening statement subject to the proposition that if it later proves to be incompetent, the defendant would not only have an objection to it, but have possible grounds for mistrial if we are wrong about it. We are confident that this testimony is admissible, and we think we have the right to refer to it.

However, in view of the fact that the jury has been voir dired so extensively about this proof, I thought what we would do would be simply to tell the jury in opening statement that we did have some evi-[1142]dence with respect to Ferguson's death which we would offer in evidence, but which we would not specifically refer to at the time of the opening statement.

The COURT. Well, I think——

Mr. KNIGHT. Make that statement to the jury, but not indicate what the proof would be.

The COURT. I think that's better since it is a contested matter.

* * * * *

[1143] * * * * *

The COURT. The purpose of an opening statement really is to get the general outline of the case before the jury in advance in order that they may more intelligently follow the proof, and evaluate it better, having some idea about what the case is all about. That's the purpose of it, but I don't think you have to go into the details of the evidence.

* * * * *

[1144–1148] * * * * *

[1149] * * *

(Whereupon, the jury returned to the courtroom, and the following further proceedings were had in the presence of the jury:)

* * * * *

[1150–1159] * * * * *

[1160] * * * * *

Mr. KNIGHT. May it please the Court, and you ladies and gentlemen of the jury, Mr. Merritt's summary of the indictment would indicate we will be primarily focusing in this case on four major criminal offenses, and taking these offenses in chronological order, the first is the robbery of the Bank of Bordeaux,

the Bordeaux Branch of Commerce Union Bank, which occurred on the 24th of April.

The second chronologically will be the burglary at Orlinda, Orlinda, Tennessee, on the 15th of May.

[1161] The third will be the robbery of the Third and Lafayette Branch of Third National Bank on the third of August, and lastly, the killing of James Larry Ferguson, which occurred on the 23rd of September.

[1162–1168]

[1169]

Our proof will show that Ferguson lived for approximately fifty minutes after he got to the Watson residence, and that there were a number of individuals, witnesses, with him before he died.

We will have some additional evidence with respect to the circumstances of his death which we intend to offer which I will not specify at this time, because the Court has not ruled on it, but there will be, we anticipate, further evidence surrounding Ferguson's death.

We will further show that at approximately seven-thirty a.m., that same morning, Eugene Beard was picked up as a highhiker, hitchhiking on the Statesville Road in the Prosperity Community section, approximately three miles from the place where Ferguson died. He was given a ride to Watertown in Wilson County, let out, and went back to Nashville, got back to Nashville that morning.

Later that morning, Eugene Beard went to a [1170] service station in Nashville where he saw an individual that he was acquainted with, and he told this individual that he had just shot a man five times. He further told this individual that he was going some place to pick up either five or six hundred dollars.

Finally, with respect to this aspect of the case, we will show that at approximately three p.m. that afternoon, Eugene Beard was located at the home of Gary Ethridge. Also present was the defendant James Richard Self and at that time Mr. Beard was taken into custody and charged with murder.

[1171–1182]

[1183] NEAL BLACKBURN a witness called to testify by and in behalf of the plaintiff, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

Mr. WILSON. May it please the Court, anticipating and knowing the occupation that Mr. Blackburn is a photographer and physically see the United States Attorney with photographs in his hand, which we have been privileged to inspect prior, and knowing that these pictures can only be produced for one thing, and that is to inflame the jury, we object to them, and ask that they be passed to the Court that the Court may rule on them at this time.

That's on behalf of the Ethridges.

Mr. MERRITT. I never heard an objection like that, may it please the Court, to demonstrative evidence.

Mr. WILSON. You have a lot to learn, General.

Mr. MERRITT. May it please the Court——

The COURT. Are you objecting to the order in which they are offered, or the admissibility in any event?

Mr. WILSON. We are objecting to the admissibility of any photograph of the deceased.

[1184] The COURT. On what ground?

Mr. WILSON. On the ground that the pictures are only intended to inflame the jury, that pictures of this kind, unless they themselves will show without independent evidence that there's—if there's any other independent evidence which can be offered either by stipulation or otherwise, that the deceased died as a result of gunshot wounds, then the only purpose than for these pictures would be to further inflame the jury in their minds.

The COURT. That I don't know. It depends on—we can very readily see that these pictures might have some bearing.

Mr. MERRITT. They show, of course, the place of the wounds.

The COURT. The place of the wounds, and on——

Mr. QUILLEN. Let them be described by other witnesses. As far as we are concerned, we will agree that James Larry Ferguson died of gunshot wounds inflicted by someone.

The COURT. Is it a part of the government's case to show places where the shells or bullets entered the body of the deceased?

Mr. MERRITT. Yes, sir, it is, and those——

The COURT. Don't say what the pictures show, [1185] but is that a part of your——

Mr. MERRITT. Yes, sir, it is, and——

The COURT. And it has a bearing upon the guilt or innocence——

Mr. MERRITT. Yes, sir.

Mr. WILSON. We can't see why it would if we are willing to stipulate that the deceased died by gunshot wounds, and an able and competent physician who will take the witness stand will testify——

The COURT. I don't like to discuss this too much in front of the jury. I'm sure we are going to have to excuse the jury from time to time anyway. We are going to need a recess.

[1186] * * *

(Whereupon, the jury was excused from the courtroom, and the following further proceedings were had in the absence of the jury:)

[1187–1190] * * * * *

[1191] * * * * * *

Mr. MERRITT. The pictures also show the clothes that he was wearing, those being the same clothes that he was—had on when he was with Beard just a few hours before this.

The pictures, may it please the Court, are highly relevant to the case, and if Mr. Wilson thinks the pictures in some way misrepresent the facts, that would be something else, but apparently he's not claiming there's any misrepresentation, he just doesn't want the jury to see the demonstrative evidence.

[1192–1195] * * * * * *

[1196] * * * * * *

The COURT. If the pathologist, whoever it is describes these wounds, needs the photographs to make clear to the jury where they entered and were fired at close range, then I will admit them. If he doesn't need them, then I will exclude them.

(Plaintiff's Exhibits No. 1 through 9, inclusive, were marked for identification.)

The COURT. Now one, two, three and four, they are marked on the reverse side, assuming that they are properly identified

otherwise, will be admitted in [1197] evidence later when they are offered. Later, not now.

Five, six, seven, eight and nine may be identified by the witness and filed with the Clerk for identification at this time and possibly admitted in evidence later.

All right, recall the jury.

Mr. BATEMAN. Your Honor, taking advantage of the absence of the jury, I would like to make a point. This is my first opportunity.

Mr. Merritt has announced that he intends first to prove the facts that he has surrounding the killing of Ferguson. Now inasmuch as this killing is charged as an overt act in count one of the indictment with which Mr. Self is charged with conspiracy, it is this defendant's insistence that he is entitled to have that evidence excluded unless and until there is some evidence that there was in fact a conspiracy in which he was implicated.

It's not proper to prove the overt acts or any of them unless it appears that there was actually a conspiracy of which he was a part.

The COURT. Well, as I understand it, a conspiracy case is built just like a house. You start with—somewhere with a foundation and build it brick by brick, don't you? You can't start out with proof [1198] that there was—that the parties got together and conspired and agreed, and then go from there. You've got to start somewhere.

Mr. BATEMAN. There's no materiality and no relevance of this proof.

The COURT. Unless it is connected up.

Mr. BATEMAN. Unless the conspiracy, in fact, existed.

The COURT. That's true, but if they fail to prove the conspiracy, and this was an overt act and so forth, in connection with the conspiracy, and the conspiracy count falls down, you are not hurt, are you?

Mr. BATEMAN. Well, of course the details——

The COURT. Let's see the warrant. What do you say is wrong

* * * * * * * * * * *

[1199–1222]

[1223] AFTERNOON SESSION

(Whereupon, at 1:30 o'clock p.m., Court reconvened pursuant to the adjournment, and the following further proceedings were had in the presence of the jury:)

The COURT. All right, sir, you may proceed.

ROBERT C. GOODWIN (Resumed) a witness called to testify by and in behalf of the plaintiff, having been previously sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION (Continued)

By Mr. MERRITT:

[1224–1229]

[1230]

Q. Now we'll come back to those items in a minute, and I'll ask you about them in detail, but before that, on that morning when you got up there about nine-thirty, was the sheriff there?

A. Yes, he was.

Q. Did you and the sheriff both begin immediately investigating the case?

A. Yes, we did.

Q. Was an arrest warrant issued on the basis of the investigation that you conducted and the sheriff conducted?

A. Yes, it was.

Q. When was that arrest warrant issued?

A. I believe the time was sometime shortly after noon.

Q. That same day?

A. Of September 23rd.

Q. Shortly after noon that same day and for whom was that arrest warrant issued?

A. Eugene Beard.

Q. And that's the defendant right here, Eugene [1231] Beard?

A. That's correct.

Q. Now was the arrest of Eugene Beard made that same day?

A. Yes, it was.

Q. Describe, if you will, for the ladies and gentlemen of the jury the circumstances of the arrest, what took place.

Mr. QUILLEN. Objection.

The COURT. Restate your question.

By Mr. MERRITT:

Q. Describe for the ladies and gentlemen of the jury the circumstances surrounding the arrest.

The COURT. Well, that matter might not be competent; just in that broad fashion, I don't see that it would be.

Mr. MERRITT. Sir?

The COURT. A broad question like that, the circumstances surrounding the arrest.

Mr. MERRITT. I'm trying not to lead him.

The COURT. Well, that's true.

By Mr. MERRITT:

Q. What time——

Mr. QUILLEN. Excuse me, Mr. Merritt.

This is getting mighty close to something that [1232] is going to get involved, I can anticipate what is coming, and it is our position that the warrant was void, and anything obtained under it is not admissible.

Mr. MERRITT. I intend to ask him the place and time and who was there.

Mr. WILSON. I object to that.

The COURT. Well, I can't tell what it is until I hear some specific question, the circumstances of the arrest. Just to say the circumstances of the arrest in a vacuum is meaningless as far as this case is concerned.

Mr. MERRITT. I can rephrase the question.

The COURT. Yes.

By Mr. MERRITT:

Q. What time was it, or what day was it when the arrest of Eugene Beard was made?

A. September 23, 1967.

Q. Were you present at the time of the arrest.

A. Yes, I was.

Q. What time of day was the arrest made?

A. About three p.m.

Q. That afternoon?

A. Yes, sir.

Q. Who was present with you——

The COURT. And did he say where?

[1233] Mr. WILSON. That is what the defendant Ethridge is objecting to.

Mr. QUILLEN. We object.

Mr. WILSON. And relying upon the fact that he was arrested on a void process and that any evidence secured as a result of it is inadmissible in this proceeding.

The COURT. Well, so far there has been none offered, no evidence as a result of arrest. It's not been offered.

Mr. WILSON. He's about to offer the circumstances——

The COURT. You say where he was arrested is objectionable?

Mr. WILSON. Yes, sir.

Mr. QUILLEN. Unlawful entry.

The COURT. What do you say to that, Mr. Merritt?

Mr. MERRITT. Well, there's just nothing to that. I mean I don't even know what the objection is.

The COURT. I don't either.

Mr. QUILLEN. May we have that warrant?

The COURT. They are not offering any evidence of anything that took place after the arrest.

Mr. QUILLEN. I think if he answers that [1234] question?

Mr. WILSON. We take the position, if Your Honor please, on behalf of the defendent Ethridge, that if they entered the house with a void process, that they had no right to be on the premises, and that anything coming from it would be the fruit of a bad tree.

The COURT. This is not a search; they are not offering——

Mr. QUILLEN. This is an arrest which under the Wong Sung case——

Mr. MERRITT. The Wong Sung case was about a search.

In the first place, the arrest warrant was perfectly valid, and in the second place, there was probable cause to make an arrest, and if we want to go into whether or not there was probably cause—I don't know what the objection is, I'm just going to ask him where the arrest took place and who was there.

Mr. QUILLEN. I'm trying to avoid being too specific about it in the presence of the jury.

The COURT. Let's see the warrant. What do you say is wrong with it?

Mr. QUILLEN. Doesn't cite a fact.

The COURT. What is that?

Mr. QUILLEN. It doesn't recite any facts, the [1235] affidavit doesn't. It's merely a recitation of an offense. The Giordenello case, Giordenello v. United States, I think, controls.

Mr. MERRITT. No, that's a search.

Mr. QUILLEN. Giordenello?

Mr. MERRITT. Search incident to an arrest.

The COURT. You say this is insufficient because it doesn't set out any facts as to the offense?

Mr. QUILLEN. Yes, sir, it doesn't set out any facts at all; it's a mere recitation as to an offense. It's very limited in that respect.

Mr. WILSON. And further grounds, it was served by an officer of Wilson County who was serving it in Davidson County and had no authority in this.

Mr. MERRITT. May it please the Court, anyone who has probable cause to believe a felony has been committed——.

Mr. WILSON. But if he takes out the warrant, he's bound by the warrant he has; he's bound by the process that he chose.

The COURT. Go ahead and ask the question that you had in mind.

By Mr. MERRITT:

Q. Where did this arrest take place?

A. At 3206 Dove Place, Nashville, Tennessee.

[1236] Q. 3206 Dove Place, Nashville, Tennessee; and whose residence is that?

A. The residence of Gary Lee Ethridge.

Q. And what time in the afternoon was that now?

A. About three p.m.

Q. Were you present when the arrest was made?

A. Yes, I was.

Q. And what other law enforcement officers were present?

A. There was a sheriff of Wilson County; there was another agent of my bureau.

Q. Mr. Moss?

A. Mr. Moss.

Q. Ambrose Moss?

A. Mr. Moss, Mr. Hamar of the FBI, Mr. Hillin of the FBI. There were one or two other officers there, but I don't recall their names specifically.

Q. Now at the time you made this arrest at three o'clock in the afternoon of that same day, did you have some information that Beard was there?

A. Yes, we did.

Q. And how did that information come to you?

Mr. QUILLEN. We object, if the Court please.

The COURT. Overruled.

The WITNESS. It came through Mr. Hamar; he [1237] advised us that Beard was at this home.

By Mr. MERRITT:

Q. And this was the basis for your action?

A. That's correct.

Q. All right. Now when you got out to 3206 Dove Place—by the way, is that out in Bordeaux?

A. Yes.

Q. Bordeaux section?

A. Bordeaux section.

Q. When you and the other officers got there to make the arrest, who—were any of the defendants present?

A. Yes.

Q. Who were they?

A. There was——

Mr. QUILLEN. We object to any testimony about anything that they discovered as a result of this.

Mr. WILSON. As a result of this unlawful search.

Mr. BATEMAN. I object too.

The COURT. I haven't heard anything about a search.

Mr. QUILLEN. It's an entry, an unlawful entry.

The COURT. Is there any objection made to the entry?

By Mr. MERRITT:

Q. What were the circumstances under which you [1238] gentlemen made the arrest?

A. On the basis of the warrant and the fact that we had received information that Beard was in that residence.

Mr. MERRITT. We can get into what information they had if there's a question about that.

The COURT. Well, I must say I don't see your point so far. We might have to excuse the jury to go into it.

Mr. QUILLEN. I think that should be done.

The COURT. All right, let the jury be excused.

* * * * *

[1239–1260] * * * * *

[1261] * * * * *

Mr. MERRITT. No, sir, I don't think it makes any difference; he was advised of his rights under the Miranda——

The COURT. Yes, he was advised of his rights.

(Whereupon, the jury returned to the courtroom, and the following further proceedings were had in the presence of the jury:)

By Mr. MERRITT:

Q. Now, Mr. Goodwin, we'll get back to where we left off. Let's see, three o'clock in the afternoon Saturday, September 23, you and some other officers, I believe you said, arrested the defendant Eugene Beard. Can you [1262] identify him in the courtroom?

A. Yes, sir.

Q. Which one is he?

A. He is the man, black-headed man, sitting by Mr. Lowery at the end of the table.

Q. At the corner?

A. Yes.

Q. Is he the man you arrested that day?

A. Yes.

Q. All right. At whose house did you arrest him?

A. At the residence of Gary Lee Ethridge.

Q. Now can you identify that gentleman?

A. This is Mr. Ethridge with the glasses on by Mr. Wilson.

Q. And who else was at that house other than the law enforcement officers when you—did you go in the house?

A. Yes, I did.

Q. Who else besides Beard and Ethridge was there in the house at that time?

A. Well, there was Georgia Ethridge or Mrs. Ethridge.

Q. Is she the lady sitting here next to Mr. Ethridge?

A. Yes, next to him in the yellow dress.

Q. All right, who else?

[1263] A. Mr. James Richard Self.

Q. And can you identify him?

A. Next to Mr. Bateman in the light-colored suit.

Q. And who else?

A. And there was Effie Octavia Pilkington.

Q. Now, Mr. Goodwin——

Mr. WILSON. Better get it all in there at this time; there was another party present.

The COURT. Who else?

By Mr. MERRITT:

Q. Anyone else?

A. Eugene Beard.

Mr. WILSON. Hadn't got them all yet. At least that doesn't agree with my Jencks Act statement. How about Mr. Bratton, just ask him about it.

By Mr. MERRITT:

Q. Do you recall whether a Mr. Bratton was present?

A. Yes, there was another gentleman, and I did not get his name. I believe that he was related, if I'm not mistaken, to either Mr. or Mrs. Ethridge. I'm not sure, but I did not get his name. I do recall that he was there.

Q. Now after the arrest was made, did you take Beard into custody?

A. Yes, sir.

Q. And, was he then incarcerated?

[1264] A. Yes, sir.

Q. Where?

A. At the Wilson County jail in Lebanon, Tennessee.

Q. All right, sir. Subsequent to the arrest and his—what time was he incarcerated in the jail?

A. I would estimate that it was somewhere close to five p.m.

Q. Now that same day or evening, did you have occasion to interview and interrogate Beard?

A. Yes, I did.

Q. And about what time was that?

A. That was about eight p.m.

* * * * *

By Mr. MERRITT:

Q. About what time was that when you interviewed him?

A. That was about eight p.m.

Q. That night?

A. Yes, sir.

Q. Now would you tell the ladies and gentlemen of the jury whether you advised him of any constitutional rights or not?

[1265] A. Yes, I did.

Q. Would you tell them precisely what you told him about that?

A. I carry with me a small printed card, the caption of the card is "The Miranda Warning," and in substance this card states as follows, this is what I read to Mr. Beard:

Number one, you have the right to remain silent;

Number two, anything you say can and will be used against you in a court of law;

Number three, you have the right to talk to a lawyer and have him present with you while you are being questioned;

Number four, if you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one.

Now after reading this to Mr. Beard, I asked him, number one, do you understand each of these rights I have explained to you, and he said that he did.

Number two, having these rights in mind, do you wish to talk with me now, and he said that he would.

Q. And then did you interrogate him?

A. Yes, I did.

Q. What questions did you ask and answers did he give?

A. Well, the first phase of the conversation that [1266] I had with him was getting his full name of William Eugene Beard and the address of 179 Welworth Street, Madison, Tennessee. Of course it was apparent that he was a white male, and I asked him how old and he said twenty-two. I asked him his birth date, which he gave as March 5, 1945, and the place of birth as Davidson County, Tennessee. He gave me his height and weight as five foot ten, 165 pounds, black hair, brown eyes, and he stated he had had no military service. He furnished his social security number, which is 412–64–8057. He stated that Mrs. Allie Beard was his mother, and she lived at 928 Boscobel in Nashville, and Donald Beard was his brother, and he lived at the same address. He stated that he did have a Tennessee driver's license, and that he owned a 1960 Fiat, off green color, automobile.

He gave me his occupation as that of a shipping clerk, his education as being a high school graduate, and in discussing scars and marks, he displayed two tattoos of a panther and a snake on his right forearm, and a cross and a rose on the left forearm.

Q. Now that's the personal history that you got from him, according to your regular procedure?

A. Yes.

Q. Then did you proceed with the questioning?

A. Yes, I talked with him, and I discussed with him certain things that we knew up to that point with regard [1267] to this matter, and he stated to me that he had been with Larry Ferguson at about one-thirty a.m. on this date. He said that he had met him at the Burger Boy——

Q. Let's see, one-thirty a.m., would have been early in the morning on Saturday morning?

A. That's correct.

Q. All right.

A. And he said he had met him at the Burger Boy and had left him there.

Q. Did he say what Burger Boy that is?

A. Later he identified the particular Burger Boy.

Q. Excuse me for interrupting.

A. All right. There again, as I said, I advised him of the information that we had received up to this point, so far as this matter was concerned, and I asked him what reason that he would have to shoot this man, and he comes along and says, well, that Ferguson had tried to frame him on two bank jobs, and when I asked him which ones, and he named one, he said the Bordeaux job.

Q. This was in answer to what question?

A. Well, I advised him at the time of the information that we had received up to this point as to——

Q. Yes, I understand.

A. ——data that we had gathered.

Q. And then you asked him a question?

[1268] A. I asked him what reason would you have to shoot this man, and he just kind of shook his head, and said, well the man had tried to frame him on two bank jobs, and when I asked him which ones, he stated the Bordeaux job, but didn't state any further.

His indication to me was that he had been set up, that this shooting had already happened, and that he had been called in. I think his words were to me, supposing that I was set up on this thing, supposing the shooting had already happened, and then I was called in, and then he goes a step further and says he had met Ferguson at the Burger Boy at Hermitage Avenue in Nashville about 1:30 a.m. on this date and that Ferguson had driven the black Hudson over into East Nashville, and he had followed Ferguson over there on his bike.

Q. His bike—maybe you're going to say that—what kind of bike he was talking about.

A. I didn't get anything specific other than I assumed it to be a motor bike.

Q. All right.

A. He said that Ferguson had made a telephone call from a booth at the market at 10th and Fatherland Street. I asked him to go ahead and tell me what had happened, and he said nothing further.

I told him that every effort would be made to prove his innocence if he had not committed this act, and at [1269] this point he said he would like to talk to his attorney before he said anything further, and our conversation ended at that time.

[1270–1319]

[1320] November 21, 1967

(Seventh day of trial)

(Whereupon, at 9:25 o'clock a.m., Court was reconvened pursuant to the adjournment, and the following further proceedings were had in the presence of the jury:)

[1321–1379]

[1380] MARY LUCY WATSON a witness called to testify by and in behalf of the plaintiff, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

By Mr. MERRITT:

[1381–1385]

[1386]

Q. Then he fell to the ground, when you turned the light on, and then what happened?

A. He said——

Mr. QUILLEN. Object.

[1387]

The COURT. All right. Well, let the jury be excused for a recess at this time.

(Whereupon, the jury was excused from the courtroom, and the following further proceedings were had in the absence of the jury:)

[1388-1434]

[1435]

The COURT. If it turns out after this proof is in that there is no basis whatever, no reasonable or fair basis, I'll put it that way, on which I could conclude that there was opportunity for this declarant to know the facts on which this expression of opinion, if you want to call it that, was based, well then, I'll declare a mistrial in this case.

Mr. BATEMAN. I'm speaking particularly, not of [1436] the opportunity—

The COURT. And I'll give the government that warning now.

Mr. BATEMAN. —but of the opinion, Your Honor.

The COURT. Recall the jury.

Your objections will be noted.

Mr. QUILLEN. I want to join with Mr. Wilson in the objection.

The COURT. All right.

Mr. BATEMAN. I want to note an objection too.

Mr. MERRITT. Recall Mrs. Watson.

(Whereupon, the jury returned to the courtroom, and the following further proceedings were had in the presence of the jury:)

MARY LUCY WATSON (Recalled) a witness called to testify by and in behalf of the plaintiff, having been previously sworn, resumed the stand, and testified further as follows:

DIRECT EXAMINATION (Continued)

By Mr. MERRITT:

[1437]

Q. All right. Just narrate for the jury from that point what happened. Did he say anything when he was on the ground by the car?

A. Yes, he said, help, I've been shot, call an ambulance.

[1438]

Q. What did he say when he was over there on the porch?

A. He said, oh, Lord, have mercy on me, forgive me.

Q. Lord have mercy on me, forgive me?

A. Yes, and then he said, at least open the door, I have a confession to make, just look what Eugene Beard did, I know too much about some bank robberies.

Q. Repeat that, please, for Mrs. Courch.

A. He said, just look what Eugene Beard did to me, [1439] I know too much about bank robbing.

Q. Some bank robbing?

A. Bank robbing.

Q. All right. Now did you hear him say anything else while he was there in your front yard?

A. Yes, I heard him say what his name was when Mr. Willard was talking to him.

* * * * *

[1440] * * * * *

[1441] * * * * *

Q. Did you at any point hear Mr. Willard asking any questions of Mr. Ferguson?

A. I heard him ask what his name was. I went on the outside, and heard him ask him what his name was, and he said, Larry Ferguson.

* * * * *

[1442–1462] * * * * *

[1463] * * * * *

ROY W. WATSON, a witness called to testify by and in behalf of the plaintiff, after having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. MERRITT:

Q. State your name again for the jury, please, Mr. Wilson.

A. Roy Wright Watson.

Q. Are you the husband of the lady who just [1464] testified?

A. Yes, sir.

* * * * *

[1465–1467] * * * * *

[1468] * * * * *

Q. The first question you asked him was what? What did you say to him?

A. I said what's your name, boy, and he said, Larry Ferguson.

Q. I see. And what was the next question? Did you ask him another question?

A. I asked him what was the matter with him, and he told me he was shot.

Q. That he had been shot?

A. Yeah.

Q. And what else did you ask him?

A. I asked him who shot him, and he told me who he said shot him.

Q. Who did he say?

A. Eugene Beard.

Q. Said Eugene Beard shot him?

A. Yes, sir. I asked him what about.

Q. Asked him how come, what about?

A. I asked him why did they get into it, and how come him to shoot him, and he said because he knew too much about some bank robbing.

[1469–1486] * * * * *

[1487] GRADY MURPHY, a witness called to testify by and in behalf of the plaintiff, after having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. KNIGHT:

* * * * *

[1488–1489]

* * * * *

[1490]

* * * * *

Q. What happened after you got around to the front of Mr. Watson's house?

A. Well, Roy asked this—asked him who he was, and he told him that it was Larry Ferguson.

[1491] Q. All right, sir.

A. And he asked him where he lived, and he said he lived at Nashville, and then he asked him who shot him, and he said—I can't think.

Q. Can't remember the name?

A. Eugene Beard.

Q. Said Eugene Beard?

A. Shot him, and he asked him what for, and he said he knowed too much about certain bank robberies, or something or other like that.

Q. All right. Did this man say anything more at that particular time?

A. No, sir.

Q. All right, sir.

Now did someone else come up to Mr. Watson's front porch a short time later?

A. Mr. Willard.

Q. Mr. Taylor Willard?

A. Yes, sir.

Q. And what happened after Mr. Taylor Willard got there?

A. He asked him the same thing:

Q. And what answers did Ferguson make to Mr. Willard's questions?

A. Mr. Willard asked him who he was and he told [1492] him he was Larry Ferguson and asked him where he lived, and he said Nashville, and asked him who shot him, and he said Eugene Beard.

Q. Did he say anything more?

A. No, sir, that's all he said.

Q. Did Mr. Taylor Willard ask him any further questions after he said that Eugene Beard shot him?

A. Not as I know of. I don't think he did.

Q. Did he ask him why he shot him or what the reason for shooting him was?

A. Yeah, he told him, because he knowed too much about certain bank robberies or something like that.

Q. All right. So told him essentially what he had previously told Mr. Watson, is that right?

A. Yes, sir.

* * * * * * * * * * *

[1493–1505]

[1506] November 22, 1967

(Eighth day of trial)

* * * * * * * * * * *

[1507–1508]

[1509] * * * * * *

(Whereupon, the jury returned to the courtroom, and the following further proceedings were had in the presence of the jury:)

[1510] The COURT. All right, sir, are we ready?

Mr. KNIGHT. Yes, Your Honor.

MARY LUCILLE MURPHY, a witness called to testify by and in behalf of the plaintiff, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

By Mr. KNIGHT:

* * * * * *

[1512] * * * * * *

Q. And where was Mr. Ferguson at that time?

A. He was on the Watson porch.

Q. All right. Now during the time that you were sitting by the window, did you hear any conversation between Mr. Watson and Larry Ferguson?

A. Yes, sir.

Q. What did you hear?

A. Well, Mr. Watson asked him what his name was, and he said, Larry Ferguson, and he asked him where he lived, and he said Nashville, and he said, who shot you, and he said, Eugene Beard.

Q. And did he ask him anything else that you remember?

A. No, sir, not at that time.

Q. Didn't ask him why he had been shot?

A. Oh, yes, sir, he did. I'm kindly excited, you [1513] know.

Q. I understand.

A. He asked him why he shot him, and he said, because he knew too much about some bank robbing.

Q. Did Mr. Taylor Willard arrive at the Watson house shortly after that?

A. Yes, sir.

Q. Did you overhear any conversation between Mr. Willard and Larry Ferguson?

A. Yes, sir, I did.

Q. Would you state that conversation, please?

A. Yes, sir, Mr. Willard asked him what his name was, and he said, Larry Ferguson, and he asked him, said, where do you

live, and he said Nashville, and he said, who shot you, Eugene Beard, and he said, what did he shoot you for, and he said, because I knew too much about some bank robbing.

Q. And that was the end of that conversation?

A. Yes, sir.

* * * * * *

[1514–1519] * * * * *

[1520] TAYLOR WILLARD a witness called to testify by and in behalf of the plaintiff, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

By Mr. MERRITT:

[1521–1522] * * * * *

[1523] * * * * *

Q. All right. And what did you see when you got to the Watsons' house that morning?

A. Well, the car was sitting in front of the house, and a fellow laying on the porch in front of the door.

Q. And what did you do when you got there?

A. Well, he said he had been shot, and wanted some help, and they just told me they had called an ambulance, and I asked him his name and where he lived.

Q. You asked him his name?

A. Yes, sir.

Q. What was the first thing he said to you? Did he say something to you before you said something to him or what?

A. Well, when I walked up, he said, I've been shot, do something for me.

Q. And then you heard that the ambulance had been called?

A. Yes, sir.

[1524] Q. And then what was the next thing that happened then?

A. I asked him his name.

Q. What did he say?

A. Said Larry Ferguson.

Q. Go ahead and describe——

A. I asked him where he lived, and he said in Nashville.

Q. All right, what else?

A. I asked him who shot him, and he said, Eugene Beard.

Q. All right. Anything else said?

*

A. I asked him how come him to shoot him, and he said, I knew too much about some bank robberies.

Q. Knew too much about some bank robberies?

A. Yes, sir.

* * * * *

[1525–1622]

* * * * *

[1623]

* * * * *

JOHN THOMAS VAUGHN a witness called to testify by and in behalf of the plaintiff, after having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. KNIGHT:

* * * * *

[1624] Q. Mr. Vaughn, where do you work at the present time?

A. Pepsi Cola.

Q. Could you speak up?

A. Pepsi Cola Bottling Company.

Q. Pepsi Cola Bottling Company?

A. Yes, sir.

Q. Where were you working last September of this year?

A. Gateway Texaco.

The COURT. Try to lean forward and maybe you can be heard.

By Mr. KNIGHT:

Q. Gateway Texaco?

A. Yes, sir.

Q. That's a service station?

A. Yes, sir.

Q. Where is that located?

A. On Gallatin Road.

Q. All right, sir. Now do you know the defendant in this case, Eugene Beard?

A. Yes, sir.

Q. How long have you known Mr. Beard?

A. Ten or twelve years, I guess.

Q. During the time that you were working at the [1625] Gateway Texaco Service Station, would Mr. Beard come by on occasion and talk to you?

A. Every now and then.

Q. Do you remember an occasion in September of this year, early part or middle part of September, Mr. Beard came by the service station and said something to you about Larry Ferguson?

A. Yeah.

Q. Would you tell the ladies and gentlemen of the jury what Beard said on that occasion?

A. That Saturday morning you're talking about?

Q. No, I'm talking about prior to that, before that.

A. Oh, he just said Ferguson was talking too much and had to be taken care of.

Q. Had to be taken care of?

A. Yeah.

Q. Because he was talking too much?

A. Yeah.

* * * * *

[1626] * * * * *

[1627] * * * * *

Q. Did you or not see Mr. Beard on the morning that Ferguson was killed?

A. Yes, sir.

[1628] Did Mr. Beard make any statement to you on that occasion?

A. He just said he shot at a guy last night that shot at him.

Q. He shot at a guy that shot at him?

A. Yes, sir.

Q. Did he state how many times he had shot at this individual?

A. Yeah, he said he shot five times.

Q. He had shot five times. And he also stated, I believe you said, that this individual had shot at him, is that right?

A. Yeah, shot at him with a shotgun, and he turned and shot back.

Q. Did he make any further statement to you about some money?

A. No, I went to the bank one day.

Q. I'm talking about on the Saturday morning that Larry Ferguson was killed?

A. Yeah, he said he was going to make three or four hundred or going to pick up three or four hundred dollars.

* * * * *

[1633] REDIRECT EXAMINATION

By Mr. KNIGHT:

Q. Mr. Vaughn, you were interviewed about this situation by this gentleman sitting right here, Mr. John Rodgers, is that right?

A. Yes, sir.

* * * * *

Q. All right. These statements that you testified to, are they the truth, or are they not?

A. As far as—I'd say yeah.

Q. They are the truth?

A. Yeah, but it's not all—what's wrote down [1634] there is not all I said.

Q. All right, Mr. Vaughn, you testified about the five shots.

A. Yes, sir.

Q. Is that a true statement?

A. Yes, sir.

Q. All right. You've testified that Eugene Beard said that Larry Ferguson would have to be taken care of because he was talking too much?

A. Yes, sir.

Q. Is that right?

A. Going to take care of him.

Q. Is that true?

A. That's true.

Mr. KNIGHT. That's all.

* * * * *

[1635] * * * * *

[1636] * * * * *

Mr. MERRITT. Call Mr. John Rodgers.

Mr. WILSON. The witness hadn't been under the rule.

Mr. MERRITT. No, sir, but something has come up here that we think he ought to be put on the stand, impugn the integrity of the FBI.

Mr. WILSON. May it please the Court, we would like to know under what rule this man can testify when he's been sitting in the courtroom during the entire trial.

[1637] The COURT. Did you plan to use him as a witness?

Mr. MERRITT. No, sir, we did not plan to use him, but when they make these kind of accusations——

Mr. QUILLEN. Your Honor, he was their witness, and they are bound by what he said.

The COURT. You say they are bound by what he says. What do you mean by that?

Mr. QUILLEN. A person who calls a witness is bound by the—represents, I thought, that that witness would tell the truth and it's binding upon the person who calls him.

The COURT. No, I don't think so, it's a question for the jury in the light of all the evidence in the case whether he's telling the truth or telling a falsehood. That's a jury question.

All right, go ahead.

This witness will be limited strictly to the matter you say was developed in the courtroom, and he will not be permitted to testify on any other aspect of the case.

* * * * *

[1638–1640]

[1641] * * * * *

LLOYD E. BEST, JR., a witness called to testify by and in behalf of the plaintiff, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

By Mr. MERRITT:

* * * * *

Q. Do you know Eugene Beard?

A. Yes, sir.

Q. For how long have you known him?

A. I would say ever since about eleven or twelve years old.

[1642] * * * * *

Q. I'll ask you did you see him back last summer sometime?

A. I seen him back—let's see—about March or April. I don't remember exactly.

* * * * *

Q. What did he say to you on that occasion?

A. Well, we talked a whole lot, and I asked him how he was getting along, and he said, pretty good, said a boy ratted on him, he was going to have to take care of him, and [1643] he said he was going to have to whup up on him.

Q. Said a boy ratted on him, and he was going to take care of him?

A. He said he was going to have to whup up on him.

Q. Did he say he was going to take care of him?

A. Yes, sir, and I said, what do you mean, and he said he was going to have to whup up on him.

Q. All right, sir. Then I'll ask you if you saw him on Saturday, September 23rd?

A. That was on Saturday, wasn't it?

Q. Yes, sir.

A. Yes, sir, he come by the service station, eight or eight-thirty, I don't remember exactly, somewhere in that neighborhood, because I hadn't been open long, and he was on his motorcycle, and he got eighty-five cents worth of gas, and I asked him what he was up to, and he said, well, I guess the police will pick me up today, and I said, what do you mean, and he said, oh, nothing, and I took it he meant——

Q. I don't care what you took it as, I'm just asking what he said.

A. Well, that's what he said.

Q. He said the police will be around to pick me up?

A. Yes, sir.

* * * * * * *

[1644]

[1645] REDIRECT EXAMINATION

By Mr. MERRITT:

Q. You said eight, it's been eight or nine months.

A. I said eight or nine.

Q. You said eight, March or April.

A. I said back the early part of the summer.

Mr. QUILLEN. Object to that, if he's going to cross examine all the witness he bring up there.

The COURT. Well, if you have a statement there, I'll take a look at it.

Mr. MERRITT. Yes, sir.

The COURT. Now what is the exact question you are putting to the witness?

[1646] * * * * * *

[1647] * * * * * *

Mr. LOWERY. If the Court please, may I interrupt, has this witness been declared a hostile witness, because if he hasn't I don't believe he has a right to cross examine his own witness.

The COURT. You will have to have him declared a hostile witness.

Mr. MERRITT. I move the Court to have this man declared a hostile witness.

Mr. QUILLEN. No representation that he was taken by surprise, object to that.

Mr. LOWERY. He said he talked to him.

Mr. MERRITT. He didn't tell me that.

[1648] The COURT. If he has given a prior statement inconsistent with his testimony, he can be cross examined with respect to it.

Mr. WILSON. There's no differential——

The COURT. He said in the early part of his testimony that it was the early part of the summer.

Mr. WILSON. Yes, sir.

The COURT. And then he said eight or nine months ago. I think what the United States Attorney is trying to do is to see what time he's going to fix this happening.

What is your testimony in regard to it, when was it. As best you can recall, that's all you can do; the best of your recollection, when did this take place?

The WITNESS. March or April.

The COURT. All right. Doesn't that answer it?

Mr. MERRITT. Yes, sir, but I just want to point out that that is inconsistent with what—I want to have him declared a hostile witness.

Mr. WILSON. I would want to point out this is November, and the third month is March and three from eleven will give mathematical——

Mr. MERRITT. I would like to examine him.

The COURT. Didn't he testify that he told the [1649] FBI it was the early part of the summer?

Mr. MERRITT. Yes, sir, there are several other things here too.

The COURT. All right, if there's something else, I think you can cross examine him on that point.

Mr. MERRITT. All right.

By Mr. MERRITT:

Q. And when you told the FBI—you admit that you told the FBI it was in the early part of the summer, do you not?

A. Yes, sir.

Q. When you told the FBI about this, did you tell him that Beard said he was going to whip up on somebody?

A. No, sir. When these people—when they come out there and was talking to me, they told me what they wanted me to say. In other words, they wrote it down and said, is this your statement, and said is that right, and I said, yes, that's right, I told them four or five times I didn't know nothing about it, and they just kept on and on.

Q. Do you recognize—I'll ask him to stand up—Mr. Rodgers right here?

A. Yes, sir.

Q. Is he the man who came out to see you?

A. Yes, sir.

Q. And he had a statement prepared for you to [1650] sign?

A. Yes, sir.

Q. About what?

A. He stood there, and there was a younger fellow there.

Q. Mr. Mandyck I believe was his name.

A. And I was back behind the office there, and they was standing beside the pinball machine, and I was sitting on a step ladder, and he would look around and talk a few minutes, and write a little bit, and then directly he handed me the statement, and he said, is that correct, and I said, strike that last statement down there, and every time I would say something, he would write it the way be wanted to, so I give up on it, I told him I didn't know nothing about it to talk about.

Q. Let me ask you to read this statement again.

A. I just read that statement.

Q. You read it again, all the way through good.

All right, sir. Now I want to read it to you line by line and ask you if you said that.

Did you tell the FBI, Mr. Rodgers here, that you lived at trailer S–13, Holiday Trailer Court, 201 Brazzard, Nashville, Tennessee?

A. No, sir, he asked me did I live there; he had that information when he came.

[1651] Q. Did you tell him that you lived there?

A. I said, yes, sir.

Q. Did you tell him the truth about it?

A. Yes, sir.

Q. Did he ask you if you had known Eugene Beard?

A. Yes, sir.

Q. Did you tell him that you had?

A. Yes, sir.

Q. For how long?

A. Ever since I was about ten or eleven, I guess. We went to school together.

Q. Did you tell the FBI that early in the summer you were driving with your wife in the vicinity of 9th and Boscobel Streets in Nashville, Tennessee, when you observed Eugene Beard on the side of the street?

A. Yes, sir.

Q. Did you tell Mr. Rodgers that you stopped and picked him up and carried him to a nearby store?

A. Yes, sir.

Q. Did you tell him that during the process of this trip, Beard told you that a boy had ratted on him, and it looked like he was going to have to take—quote—take care of him?

A. Yes, sir.

Q. Is that true?

[1652] A. Yes, sir.

Q. Did you tell Mr. Rodgers that on Saturday, September 23, 1967, Beard came into the station on his motorcycle and purchased eighty-five cents worth of gasoline?

A. Yes, sir.

Q. Is that true?

A. Yes, sir.

Q. Did you tell him that Beard asked what he was doing—did you tell him that you asked Beard what he was doing, and Beard answered, quote, the police will be around to pick me up, you'll hear all about it, end quote?

Did you tell the FBI that?

A. No, sir.

Q. You did not?

A. I told the FBI that Eugene Beard said that the police would probably be around to pick him up.

[1653]

[1654] PAUL MICHAEL BATES, a witness called to testify by and in behalf of the Plaintiff, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

By Mr. KNIGHT:

Q. How old are you?
A. Fifteen.

Q. Are you in school?
A. Yes, sir.
Q. High school?
A. Yes, sir.
Q. I'm just going to ask you a few questions, Paul. First of all, I'm going to ask you whether you remember being at the Gateway Texaco Service Station on Gallatin Road around the middle of September.
A. Yes, sir.
Q. This year?
A. Yes, sir.
Q. Do you remember whether or not Eugene Beard was [1655] there at that time?
A. Yes, sir, he was.
Q. You do know Eugene Beard?
A. I know what he looks like.
Q. Can you identify him?
A. Yes, sir.
Q. Do you see him in the courtroom?
A. Yes, sir.
Q. Where is he sitting?
A. At that table.

Q. Where is he sitting at the table, Paul?
A. Sitting at the end of it.

Q. At the end of the table?

A. Yes, sir.

Q. On which side, the near side or the far side?

A. The far side.

Q. All right. Now just tell the jury what, if anything, Mr. Beard said on that occasion at the Texaco station.

A. Well, there was a few people looking at a gun, and he said he needed a gun like that, there was somebody he needed to kill.

Q. Could you repeat that, I didn't hear what he said.

[1656] A. He said he needed a gun like that, that he needed a gun like that, that there was somebody he needed to kill.

Q. That there was somebody he needed to kill?

A. Yes, sir.

Q. And that was approximately the middle of September, is that right?

A. Yes, sir.

[1657–1660]

[1661]

EVA MAY COFFELT, a witness called to testify by and in behalf of the plaintiff, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

By Mr. MERRITT:

[1662]

Q. All right. I'll ask you to state whether or not you saw Eugene Beard back in August, the latter part of August?

A. Yes, sir.

Q. Where?

A. Up at my house.

Q. At your house?

A. Yes.

Q. Were you at home, did he come to see you?

A. No, sir, he just came by to check on me and [1663] the baby and all.

Q. He came by to check on you?

A. Yes.

Q. At that time state whether or not he said anything about Larry Ferguson.

A. All he said was Kingfish was trying to frame him.

Q. Kingfish was trying to frame him?

A. In some robberies that he did not do.

Q. In some robberies that he did not do?

A. And that Kingfish's days were numbered.

Q. Kingfish's days were numbered?

A. Yes.

Mr. MERRITT. Thank you, that's all.

* * * * * * *

[1664]

[1665] REDIRECT EXAMINATION

By Mr. MERRITT:

Q. Did he write that statement down from what you told him?

A. No, sir, all of it is not true.

* * * * * *

Q. I wish you would read this statement and tell me what part of it is not true.

* * * * * *

[1666]

Mr. BINKLEY. I would just like to state here that Mr. Merritt has gone through two witnesses where he has gotten in a document that wouldn't be admissible under any rules——

The COURT. I don't think he's offered them into evidence.

Mr. MERRITT. No, sir.

The COURT. They have merely been passed to the witness.

Mr. BINKLEY. He's read one completely and I know Mr. Merritt is smart enough to talk to a witness [1667] before he puts a witness on the stand.

Mr. MERRITT. But these are all friends of the defendant.

Mr. QUILLEN. We object to that.

Mr. BINKLEY. We called the witnesses.

The COURT. Well, I don't know what she's going to say either. I don't know anything about it.

By Mr. MERRITT:

Q. Is there something in there that's not true?

A. It's all true.

Q. It's all true?

A. Yes.

Q. So this statement is true, that's what you told the FBI?
A. Yes.
Q. Is Eugene Beard a friend of yours?
A. Yes, sir.
Q. How long has he been a friend of yours?
A. About fourteen months.
Q. Has he been good to you?
A. He's never said anything out of the way to me.
Q. Do you like him?
A. As a friend.

* * * * * *

[1668]

* * * * * *

DARRELL L. HAMAR, a witness called to testify by and in behalf of the plaintiff, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

By Mr. KNIGHT:

* * * * * *

Q. During the course of the last several months, have you had occasion to interview Mr. James Larry Ferguson?
A. Yes, sir, I have.

Mr. WILSON. I think the jury should be—leave the room at this time, because any—there would be certainly some objections to statements.

The COURT. Yes, I expect so. Let the jury [1669] retire for a few minutes.

(Whereupon, the jury was excused from the courtroom, and the following further proceedings were had in the absence of the jury:)

The COURT. All right. Now what are the proposed questions?

Mr. KNIGHT. The proposed questions are very general questions in terms of the fact that Mr. Hamar and later we'll introduce Mr. Norwood, have had interviews with Ferguson over the last several months. During the course of these interviews, Mr. Ferguson has given them information. He has given them information about bank robberies, and he has given them information in particular about the Bordeaux Bank robbery, and the Third National Bank bank robbery.

I didn't propose to go into any details about who he had said was involved or how the robberies were conducted or anything else.

Mr. BINKLEY. If Your Honor please, here again the government is putting in proof that wouldn't be admissible by any stretch of the imagination, and just to say that this is being put in for some reason on this other thing, you are making incompetent evidence competent, and I object to it.

[1670] The COURT. Well, as I understand it, that he does not intend to ask him to name any names or connect these conversations with any particular person.

Mr. KNIGHT. That's correct, Your Honor.

Mr. WILSON. We are strenuously objecting as to the fact of the subject matter as to what he questioned him about, because there again if the subject matter is lifted from a person who is a second person, it falls right under the hearsay rule. He can state only one thing, on a date, I did interview James Larry Ferguson, and that would be all that he could do.

He can't say what he asked him, because there again, we have no defense to it, because the man is dead now.

Mr. BINKLEY. And, if Your Honor please, when he starts talking about bank robberies that Larry Ferguson has talked to him about, there are two parts in this indictment, and in the counts where James Larry Ferguson is charged with robbing a bank with James Herman Bostic, there's no way you can remove this from the jury's mind, and I feel that this evidence is incompetent, and he shouldn't be allowed to testify anything about any statements that were made concerning any alleged bank robberies.

The COURT. In particular robbing them?

[1671] Mr. BINKLEY. For him to state that Ferguson has been talking to him about bank robberies is going to allow the jury to have something by innuendo that it wouldn't ordinarily have, and he might be better off telling specific bank robberies than making it a mysterious thing and letting the jury ponder over it, but in either event, I don't think either one would be competent.

The COURT. Under what theory do you offer this testimony?

Mr. KNIGHT. All right, Your Honor, we charged in the eighth count of this indictment that Ferguson was killed to prevent him from exposing these defendants in connection with bank robberies charged in this indictment.

Now the reason for specifying the Bordeaux and Third National robberies is that we must prove some connection between the murder and these two robberies.

Now insofar as prejudicing these defendants is concerned, anything Mr. Hamar says will not be evidence at all. It won't be hearsay evidence, it won't be any kind of evidence with respect to these robberies. He will state that he got some information from Ferguson about these robberies.

[1672] It's part of the defendants' theory of this case, as I understand it, that Ferguson was giving false information about the Bordeaux robbery, but we do need to establish that information was being given, because we will have further proof that—and we have had some proof already—that the defendants had a motive to kill this man because they thought he was giving information. Mr. Hamar's testimony simply corroborates this.

The COURT. You are offering this then only under the eighth count?

Mr. KNIGHT. Yes, Your Honor.

The COURT. Not as evidence under the other counts?

Mr. KNIGHT. It's not evidence, there won't be any facts.

* * * * * *

[1673]

[1674] The COURT. If he testifies that he got information from Ferguson about these bank robberies that are set out in the indictment, is that what you intend to offer?

Mr. KNIGHT. Yes, sir.

The COURT. If that information comes out from this witness, how would that demonstrate that Ferguson was accusing Beard falsely? It wouldn't demonstrate anything about Beard, would it?

Mr. QUILLEN. We——

The COURT. Except to show that Ferguson, the man who was the victim of the killing, was making statements to the FBI about these transactions, and bearing on the question of motive.

Mr. KNIGHT. Your Honor, I might add——

The COURT. That's the only way it could come in under the question of motive.

Mr. KNIGHT. I might add that we are going to have this proof that would indicate that the defendants had this feeling

that Ferguson was making these statements, it's going to be an impossible situation if we can't show that that apprehension had some basis in fact. If we can't—if we have to leave that dangling in the air.

The COURT. This would not be admissible to [1675] to prove any of the alleged bank robberies, or to connect any defendant with any one of the bank robberies.

Mr. KNIGHT. And we would be willing for Your Honor to specifically instruct the jury to that effect.

The COURT. I would have to do that. It could only be that it would be admissible under the eighth count to show that the man who was actually killed was making statements to the FBI about the robberies.

* * * * *

The COURT. And the jury would be entitled to weigh that in the light of the dying declarations that he made.

* * * * *

[1676] * * * * * * *

Mr. MERRITT. It's not hearsay, because it's not being offered for the truth of the matter asserted; it's being offered to show motive.

Mr. KNIGHT. And it's testimony regarding Ferguson's actions.

The COURT. As I understand the government's proffer of proof, it's being offered for the purpose of showing that the man who was killed was appearing before the FBI in making statements, so——

Mr. KNIGHT. There was some basis for the fear that the defendants had.

The COURT. To lay the foundation for later proffered testimony according to what they say.

* * * * *

[1677] * * *

Mr. BINKLEY. If Your Honor please, at the outset of this trial, I asked for a severance. The government said they had to try both cases together. The government knew what they were going to have to prove, and if this man testifies, if Mr. Hamar testifies that he talked to Ferguson about bank robberies and just quits there, all the jury has to do is look at this first overt act in the conspiracy charge, and they see James Herman Bostic and James Larry Ferguson took money from a bank.

Now I'm forced—we have to try these cases together, but I think my defendant should be allowed every safeguard that the Court can allow, and I don't believe that it's necessary for this man to testify that he talked to him about bank robberies, because, as Mr. Wilson said, I'm sure that the FBI doesn't go around telling folks what people talked to them about, and there's no showing that this witness could show that any of these defendants knew what Hamar was talking to Ferguson about.

[1678] The COURT. There's no showing yet.

Mr. WILSON. None.

The COURT. But the government says they expect to offer proof to that effect.

Mr. BINKLEY. If Your Honor please, I don't see how this can be offered. I don't see how an instruction can help when the only one that he's charged with robbing a bank with is James Herman Bostic.

The COURT. Well, I think the best course to pursue would be to let him testify that he was interviewing Ferguson. How many times?

The WITNESS. Four times.

The COURT. And give the dates and stop with that, and later I may allow him to be recalled, but I believe at this time that would be the best course.

Mr. KNIGHT. Could I ask Your Honor this, could I ask Mr. Hamar whether the subject matter of those interviews was bank robberies?

Mr. WILSON. No.

Mr. BINKLEY. That's the same thing we are——

Mr. KNIGHT. We have got a very specific motive.

The COURT. There's already been proof on that.

Mr. MERRITT. May it please the Court——

The COURT. When you say he was being interviewed, that Ferguson was making statements to the FBI, [1679] did he give you information or make statements to you. I'll let him answer that, and the jury can take that and weigh it in the light of this other testimony, the dying declaration that he knew too much about bank robberies.

Mr. BINKLEY. But as I understand Your Honor, they are not to ask him, nor is he to answer——

The COURT. Not at this time. When I see the effect of this other testimony, it may be that that will make this admissible,

but I don't want to take the risk at this time of having error in the record.

Mr. MERRITT. Your Honor would not be in error if Your Honor let the entire statement in in detail.

Mr. BATEMAN. I disagree with that.

Mr. MERRITT. Because it is not being offered for the truth of the matter asserted.

The COURT. I understand that, but we are getting to a pretty close area, and I don't want error in this record. He can be recalled.

Mr. QUILLEN. I want to note an objection to even being permitted——

The COURT. Well, you differ with counsel representing other defendants, is that correct?

Mr. QUILLEN. I don't agree that he can be asked anything other than if he did interview him.

[1680] The COURT. Can't give the dates?

Mr. KNIGHT. Establish that he gave information.

Mr. QUILLEN. Gave information.

The COURT. I'm going to let him testify that, but not about what, and the dates.

All right, recall the jury.

(Whereupon, the jury returned to the courtroom, and the following further proceedings were had in the presence of the jury:)

The COURT. All right, sir.

By Mr. KNIGHT:

Q. All right, Mr. Hamar, I believe you testified that you had had occasion to interview Mr. Ferguson, is that right?

A. Yes, I have.

Q. On how many occasions did you interview him subsequent to April of this year?

A. Four times.

Q. Four times?

A. Yes, sir.

Q. What were the dates of those interviews?

A. The first was on April 18th of 1967; the second one was May 17th of 1967, and then on 8-22 would be August 22nd, 1967; and then September 14th.

[1681] Q. All right, sir. Where did the interview of April 18th take place?

A. Ashland City, Tennessee.

Q. At that time, did Mr. Ferguson give you any information?

A. Yes, he did.

Q. All right, sir. Now I believe you stated that the next interview was on the 17th of May.

A. That's correct.

Q. Where did that take place?

A. Here in Nashville.

Q. Can you state specifically where in Nashville?

A. Yes, at the police department.

Q. All right. And did Mr. Ferguson give you some information on that date?

A. No, he didn't.

Q. Didn't give you anything that time?

A. No.

Q. What about on the 22nd of August? Where did that take place?

A. At the police department.

Q. And on that occasion, did Mr. Mr. Ferguson give you some information?

A. No, he did not.

Q. And finally on the 14th of September, where did [1682] that interview take place?

A. It took place in East Nashville at the intersection I believe of 7th and 8th Streets.

Q. Was that in a parked car?

A. Yes, sir.

Q. I see. And did Mr. Ferguson give you information on that occasion?

A. Yes, sir.

Mr. KNIGHT. That's all, thank you.

Mr. LOWERY. Would the Court indulge us just one moment, please, sir?

No questions if the Court please.

The COURT. All right, that's all, Mr. Witness.

[Witness excused.]

* * * * * *

[1683] FRANCIS NORWOOD, a witness called to testify by and in behalf of the plaintiff, after having first been duly sworn, was examined and testified as follows:

By Mr. KNIGHT:

Q. Mr. Norwood, I will just state to you before I ask any questions that in response to my questions as to whether you received any information, just limit yourself to answering yes or no, and don't state any details.

A. Yes, sir.

Q. What is your occupation, Mr. Norwood?

A. I'm a special agent with the FBI.

Q. How long have you been with the FBI?

A. Twenty-seven years.

Q. Mr. Norwood, have you been involved in the investigation of this case?

A. Yes.

Q. During the course of this investigation, have you had occasion to interview James Larry Ferguson?

A. Yes.

Q. How many times have you interviewed Mr. Ferguson?

A. Four times.

Q. Four times?

[1684] A. Yes, sir.

Q. What were the dates of those interviews?

A. April the 18th, 1967; June the 5th, 1967; July the 7th, 1967; and August the 22nd, 1967.

Q. All right. Now I believe that the interviews of August 22nd, and April the 18th were interviews jointly by you and Mr. Hamar, is that right?

A. Yes.

Q. Now in the interview of April the 18th, I'll simply ask you whether Mr. Ferguson gave you any information at that time?

A. Yes, sir.

Q. And on the interview of June 5, 1967, first of all, where did that take place?

A. June the 5th?

Q. Yes, sir.

A. It was in an automobile on McGavock Pike.

Q. And did Mr. Ferguson give you information on the date?

A. Yes.

Q. Now the interview of July the 7th, where did that take place?

A. It took place in an automobile in front of the Linsley Apartments.

Q. In East Nashville, is that?

[1685] A. No, that's in South Nashville.

Q. All right. And did Mr. Ferguson give you some information on that occasion?

A. Yes.

Q. Was it somewhat limited?

A. Yes.

Q. All right. I believe the interview of August the 22nd was the one conducted jointly with Mr. Hamar. Did you receive information of value at that time?

A. No.

* * * * * *

[1686–1727] * * * * *

[1728] November 24, 1967

(Ninth Day of Trial)

* * * * * *

[1729] * * * * *

(Whereupon, the jury was excused from the courtroom, and the following further proceedings were had in the absence of the jury:)

* * * * * *

[1730] CHARLES BOBO, a witness called to testify by and in behalf of the plaintiff, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

By Mr. MERRITT:

* * * * * *

[1731] * * * * *

Q. And I told you that I understood you had certain information in connection with this case?

A. Yes, sir.

Q. And I told you that if you would tell the grand jury what information that you had, I would try to help you with regard to charges you then had pending against you, is that right?

A. That's what you said.

Q. You then told me that you wanted to talk to your lawyer, Joe Binkley, before you talked to me?

A. That's right.

Q. And Mr. Binkley was contacted, I believe at that time he was over at the Criminal Court on the 6th floor of the courthouse, and he came on over to my office?

A. Yes, sir.

Q. And he told you in substance that he thought you ought to cooperate with the federal authorities, or do what you wanted to do, or what did he tell you?

A. That's in essence what he said.

Q. So you testified before the grand jury.

Well, before that, you told me prior to your testimony before the grand jury that John W. Leeman, who you called Sarge Leeman, is a friend of yours?

A. Yes.

[1732] Q. You testified before the grand jury, and then you came back into my office, is that right?

A. That's right.

Q. And I said to you, did I not, that you have helped the government in this case, and that I wanted to be full and frank and fair with you, that Leeman—that I had understood before that Leeman was a friend of yours, that I wanted you to know that we were recommending that the grand jury indict Leeman in this case.

A. That's right.

Q. But I also told you that your testimony did not get Leeman in any trouble, isn't that true?

A. That's right.

Q. And then what was said about Leeman that you remember? Did we have any further conversation about Leeman?

A. Well, I don't remember that we did. I mean we may have.

Q. Did I send you out to try to get Leeman to come in and talk to me?

A. No, sir, you didn't.

Q. Or say anything to you about going out and seeing Leeman and trying to get him to come in?

A. The only thing you said was that he could help himself, that I couldn't help him no kind of way, when I asked you if I

could help him, and you said, no, nothing I could say [1733] would help him, that he might be able to help himself.

* * * * *

[1734] * * * * *

Mr. MERRITT. Is that sufficient, may it please the Court?

The COURT. Yes, I think it is.

Any questions over here?

Mr. WILSON. No, sir.

Mr. QUILLEN. I have some.

Mr. Bobo, when was it after the 26th, after you testified before the grand jury here, that you talked to Mr. Leeman? Did you talk to him on that day?

[1735] The WITNESS. When I testified?

Mr. QUILLEN. Yes.

The WITNESS. No, I don't think so.

Mr. QUILLEN. Did you transmit the message to Mr. Leeman that Mr. Merritt had stated that Leeman could held himself?

The WITNESS. Yes, I did.

Mr. QUILLEN. When did you do that?

The WITNESS. Well, whenever I saw him.

Mr. QUILLEN. Did you understand from Mr. Merritt that he wanted you to transmit that message to him?

* * * * *

The WITNESS. My understanding was that I didn't have any understanding what he wanted me to do. He didn't tell me to do anything. He didn't tell me to do anything, he only made the statement that Leeman could help himself, and I asked him is there anything I can do to help Leeman, and he said, nothing you can do, said he could help himself, and that was the extent of [1736] that.

Mr. QUILLEN. How many conversations did you have with Mr. Leeman before he decided to talk with the agents of the Federal Bureau of Investigation?

The WITNESS. How many is it necessary for me to have?

Mr. QUILLEN. I'm just asking, Mr. Bobo, how many conversations.

The WITNESS. I had as many as it was necessary.

Mr. QUILLEN. To get him to do the talking?

The WITNESS. Right, right.

Mr. QUILLEN. Did Mr. Merritt know? Did you tell him that you were going to try to get Mr. Leeman to——

The WITNESS. I didn't tell Mr. Merritt nothing; I'm not in confidence with Mr. Merritt.

Mr. QUILLEN. I beg your pardon?

* * * * *

[1737] * * * * *

[1738] * * * * *

Mr. QUILLEN. Are you not here to help yourself?

The WITNESS. I'm here to get something done [1739] that I think is in my own interests.

Mr. QUILLEN. What kind of deal——

The WITNESS. I don't have nothing against the rest of those defendants; the only man I'm interested in over there is Mr. Ethridge, and I'm not testifying against any of them.

Mr. QUILLEN. What deal was made with you to get your testimony on—what did Mr. Merritt do for you?

The WITNESS. He didn't do anything for me. I don't know whether he did or not. He said he would try to help me with the case, but my case had already been helped. In the simplest of terms, I'm up here to get Mr. Ethridge and try to help Mr. Leeman, because he's a friend of mine, and he's——

Mr. QUILLEN. I'll ask you if you didn't tell Mr. Leeman that you had worked out a deal for him?

The WITNESS. No, I hadn't worked out no deal.

Mr. QUILLEN. Did you tell him you had worked out anything for him with respect to the amount of his bond?

The WITNESS. With respect—now about that, when I testified, Mr. Merritt said if I would testify, he would try to get his bond set as low as he could. That was the only deal there.

[1740–1741] * * * * *

[1742] (Whereupon, the jury returned to the courtroom, and the following further proceedings were had in the presence of the jury:)

* * * * *

[1743–1745] * * * * *

[1746] * * * * *

Q. Prior to your arrest and during your frequent associations with Mr. Ethridge, did you ever have any conversations with him about the Bordeaux branch of the Commerce Union Bank?

A. Yes, sir.

Q. What was that conversation about? What was the nature of that conversation?

A. About how easy it would be to rob.

[1747] Q. About how easy the Bordeaux branch of the Commerce Union could be robbed?

A. Yes, sir.

Q. How many times did you have——

A. Oh, two or three times, I don't know for sure.

Q. More than once?

A. Yeah, more than once.

Q. At that time when you were associating with him frequently and before you went to jail or after that while you were in jail, did you continue to have conversations with Mr. Ethridge while you were in jail?

A. Yes, sir.

Q. What, by telephone?

A. Well, sometime I could call him, and he came to see me two or three times.

* * * * *

[1748] * * * * * *

Q. Now at any time when you were having conversations with Mr. Ethridge, did he ever tell you about his relationship with any other of the defendants?

A. Any of the other defendants?

Q. I'm talking about these other defendants, Self and so on, did he ever say anything to you about his relationship to any of the others, Mr. Self for example?

Mr. WILSON. I'm going to object to it on behalf of the defendant Georgia Lee Ethridge and on behalf of the defendant Cole as being hearsay.

Mr. BINKLEY. I'd like to offer the same objection.

Mr. QUILLEN. Same objection for Beard, may it please the Court.

Mr. BATEMAN. Same objection.

The COURT. Any statement made by Ethridge at this point would only be admissible with respect to that particular defendant.

Mr. MERRITT. May it please the Court, this is a conspiracy case.

The COURT. Yes.

[1749] Mr. MERRITT. Any statement made by one of the conspirators in furtherance of the conspiracy is admissible.

The COURT. Well, that's true, of course, but then you first have to show the conspiracy. It would not be admissible against any of the other defendants, ladies and gentlemen of the jury, unless there should be a conspiracy established by the proof and that's something you will have to determine from the entire case.

Mr. MERRITT. All right, I'll go ahead and ask him the question.

The COURT. Go ahead.

By Mr. MERRITT:

Q. Has he ever said anything to you about Self, James Richard Self?

A. He has made a statement that Self would do anything he wanted him to do.

Mr. BATEMAN. Excuse me, Your Honor, do I understand you are going to let in all of this hearsay on the assumption there will be evidence of conspiracy sometime in the future?

The COURT. That's what I stated to the jury. Is there anything wrong with that?

Mr. BATEMAN. I object to it. I think the conspiracy ought to be shown rather than to proceed on the [1750] assumption that there may or may not be some evidence that is admissible.

The COURT. Well, of course the case—the government has to make the effort to establish its case step by step. You can't take—you have to take it, as I say, you've got to proceed on a step-by-step basis. I don't see how——

Mr. BATEMAN. As I understand it, the prosecutor——

The COURT. You can't take the whole bite at once.

Mr. BATEMAN. The prosecutor's trying to show evidence that is not admissible until after the showing of a conspiracy.

The COURT. It's a matter of order of proof. At this time it would not be considered as to any other defendant, only as to the defendant Ethridge.

Mr. WILSON. Another vital element, Mr. Bobo was incapacitated at that time, he couldn't have known—the only thing he could have known at that time would be hearsay, because he has been incarcerated from back in March at the time that this alleged conspiracy was to have begun, up until the time that he went to the grand jury and thereafter, so we now know that anything that he is going to testify to would have to be the statements [1751] of one person here, and its reliability as to the others, he couldn't test the reliability as to the others.

The COURT. I'm admitting it only as to the defendant Gary Ethridge.

Mr. WILSON. But the damage will be so severe to the others, I don't see how the taint of it could be removed in the event that they are unable to establish the conspiracy.

The COURT. If they are unable to establish the conspiracy, then that count will go out.

Mr. WILSON. And it will also go to the substantive counts of the indictment wherein these other parties are charged with both possession and with entry into various banks.

The COURT. Well, he's charged in those other counts, isn't he?

Mr. WILSON. He is, but Cole and Georgia Lee Ethridge are not.

The COURT. Well, it won't be admissible as to them as to those counts, this statement would not be, it would not be considered by the jury, and the jury is instructed at this time——

Mr. QUILLEN. As I see it——

The COURT (continuing). This is the customary way of proceeding in a conspiracy.

[1752] Mr. QUILLEN (continuing). What he's saying here is more of a narrative of events and not statements made in furtherance of a conspiracy.

The COURT. Overruled. Proceed subject to the instructions I've given the jury.

By Mr. MERRITT:

Q. What did he say—was this statement that he made to you regarding Self, was that while you were in jail?

A. Yes, sir, I didn't know Self prior——

Q. You didn't know Self?

A. Four or five months ago.

Q. And the statement that Ethridge made to you was while you were in jail?

A. Yes, sir.

Q. Was that statement made to you on the phone or in person, do you recall?

A. I don't recall.

Q. All right, sir. Now what did he say to you about Self?

A. Said he would do anything he wanted him to do.

Q. Did he make any statement to you in these conversations that you had with him about any of the other defendants?

A. No, I can't recall any.

Q. In connection with the defendant Self, have you [1753] had any discussions with him about bank robbery?

A. Yes, I have.

Q. What was that discussion?

A. He told me that he robbed the Third National Bank or was in with them, the people that did it.

• • • • •

Q. While you were in jail, during this period, from March to September, the latter part of September, was James Larry Ferguson ever in jail at the same time?

A. He was.

Q. About when was that?

[1754] • • • • •

[1755] A. I would say three or four months ago, five, I couldn't say for sure, it was——

Q. But he was in jail?

A. Yes, he was.

Q. While he was in jail, did you talk to him?

A. I didn't have no long conversation with him, but I did say, hi, you know.

Q. Did he ever ask you to do anything with reference to the defendant Ethridge?

Mr. WILSON. Object to what James Larry Ferguson——

Mr. MERRITT. Well, may it please the Court, the best way to do it is in the grand jury testimony. Let me show Your Honor what I'm talking about.

Mr. WILSON. Show us too.

I can't see, if Your Honor please, what he said to the grand jury, how he could now make hearsay testimony admissible.

Mr. MERRITT. I'm not offering it as hearsay testimony; I'm offering to show that he took some action on the basis of that.

Mr. WILSON. All he could say is that after he had a conversation with him, what we are objecting to is the repetition of the words of the decedent, not what Mr. Bobo did.

[1756] Mr. MERRITT. Right here, may it please the Court, page twelve.

The COURT. Well, you may ask him if he had a conversation with Ferguson——

Mr. MERRITT. Of course, we had charged in the indictment that Ferguson and the other defendants were co-conspirators, and this would be a statement by a co-conspirator at the time.

The COURT. Well, I'll let you say that he did have a conversation and as a result what this witness did, if anything. That's as far as you may go.

Mr. MERRITT. All right.

By Mr. MERRITT:

Q. You had a conversation with him; what did you do as a result of that conversation?

A. I went and called Mr. Ethridge and told him to come and get him out.

Q. What did you tell Mr. Ethridge on the telephone?

A. Ferguson said he wanted him to come up and make his bond.

Q. All right. And what did Mr. Ethridge tell you?

A. He told me that was tough.

Q. Said he wasn't going to do it?

A. Right.

Q. Did you go back and—what did you do then?

[1757] A. I went back and told Kingfish what he said.

Q. Kingfish——

A. Ferguson.

Q. ——is James Larry Ferguson?

A. That's right.

Q. Well, in other words, you told him Gary said he wasn't going to do anything for him?

A. Right.

Q. Well, what did he ask you to do?

Mr. WILSON. Objection. Objection.

The COURT. No, the result of the conversation is all.

Mr. WILSON. Just the result, not what he said.

Mr. MERRITT. May it please the Court, we are getting into something right here, here we have this man being the messenger during the course of this conspiracy.

The COURT. Well, as a result of the conversation if he did anything, why he may testify to what he did.

Mr. MERRITT. But Ferguson's statement would be the statement of a co-conspirator.

Mr. BINKLEY. If Your Honor please, that's not right.

The COURT. That has to be established.

[1758] • • • • •

By Mr. MERRITT:

Q. As a result of what you told Ferguson, what did you do then?

A. Went and called Mr. Ethridge again.

Q. What did you tell him?

A. I told him Kingfish said if he didn't come up here and get him——

Mr. WILSON. Objection to what Kingfish said.

The COURT. He spoke to the defendant.

Mr. WILSON. We can't know what Kingfish had to say.

The COURT. No, but can know what this witness told one of one of your defendants. Overrule the objection.

Mr. WILSON. Note an exception.

By Mr. MERRITT:

Q. Go ahead.

A. He told me to tell him——

Q. No, what did you tell Ethridge on the phone.

A. Just what Kingfish told me to tell him.

Q. What was that?

[1759] A. He said something about picking up his wife somewhere or her picking him up.

Q. Something about his wife picking Kingfish up?

A. Right.

Q. And what happened then?

A. He says, okay, I'll see you, and in about maybe an hour later, Self come up and bonded Kingfish out.

Q. In about an hour the defendant James Larry Self came up and bonded Kingfish out?

A. He came to the jail, but in the meantime, they had sent Kingfish over to the county road, but he came up to the jail.

Mr. BATEMAN. I object to what he had to do or what happened after he left the jail. What this witness knows.

By Mr. MERRITT:

Q. Did you know what this message was all about that you were sending back and forth?

A. No, I didn't know at the time what it was all about.

Q. But after the second phone call, in about an hour's time. Self comes up there to get him out?

A. Right.

Q. Did you ever have a conversation with Ethridge while you were in jail concerning this boy Kingfish Ferguson [1760] and the FBI.

A. It got to be common knowledge, or I don't know whether you call it knowledge or not, but everyone——

Mr. QUILLEN. Object to what he's fixing—wait just a minute—this is a conclusion.

The COURT. Yes.

By Mr. MERRITT:

Q. Did you ever have any conversations with Ethridge about Ferguson and the FBI?

A. Yes.

Q. What were those conversations?

A. Well, we suspicioned Ferguson with talking to the FBI about bank robberies.

Mr. QUILLEN. Object to the suspicion.

Mr. WILSON. Unless they were present at the conversation, it's pure speculation.

The COURT. If that's what it was; that's what it was.

Mr. QUILLEN. He said "suspicion".

The COURT. If that's what he acted or what he thought, wouldn't that be a pertinent fact?

* * * * *

[1761] * * * * *

By Mr. MERRITT:

* * * * *

[1762] * * * * *

Q. All right. And suspicion, what did he think Ferguson was talking to the FBI about?

A. About—the main thing I think was that Bordeaux bank job.

Q. Bordeaux branch of the Commerce Union?

* * * * *

Q. All right. During that conversation, was any-[1763]thing said about Ferguson?

A. He left me with the impression there that he wanted me—wanted to hire me to kill Ferguson.

Q. All right. What was said about that, and how was it said?

A. Well, it wasn't that direct, it was just——

Q. You can go ahead and explain what ever it is.

A. Well, we just talked in general about it. I suppose—well he just asked me if I wanted to do it, and——

Q. What did you say to him?

A. Well, I told him I'd think about it.

Q. Did you have any further telephone conversations with him about it?

A. I don't know whether we talked on the telephone or in person. You see he came up there too a couple of times.

Q. Well, did he talk to you about this killing of Ferguson in person?

A. Yes.

Q. How long after this telephone conversation?

A. It must have been the next day or two.

Q. In the next day or two?

A. Something like that.

Q. And he came up to the jail?

A. Right.

* * * * *

[1764] * * * * * *

Q. And this was sometime the first half of September, something like that?

A. Something like that, yeah.

Q. All right. Well, when he talked to you in person, what did he say to you?

A. About the same thing.

Q. And that was that he wanted you to kill Ferguson for him?

A. Right.

Q. Did he indicate he was going to pay you or what?

A. There was a fee involved.

Q. Going to be a fee involved?

A. Yeah.

Q. Did he ever get specific about that?

A. I don't remember—I think it was five hundred dollars was mentioned.

* * * * *

[1765] * * * * * *

Q. Now did he say what the reason was that he wanted you to kill Ferguson for him for a fee?

A. Well, I suppose he did, but I couldn't say in what words, I just thought it was because he was trying to involve him in some bank robberies, you know, with the FBI.

* * * * *

[1766] * * * * *

[1767] * * * * *

CROSS EXAMINATION

By Mr. WILSON:

[1768–1769] * * * * * *

[1770] * * * * * *

Q. Now that was on the 26th. Did you know that as of October the 3rd, that Leeman was down here?

A. Did I know——

Q. About a week later, did you know that he came down about a week later?

[1771] A. Yeah, I knew it.

Q. Were you in his company at that time?

A. Yeah.

Q. Both of you came together?

A. Right.

Q. So actually, you did relay the information to Mr. Leeman?

A. If you——

Q. That precipitated your coming down here?

A. No, I'm not going to say that. I'm going to tell you how it really was. I influenced him to help him, because this man over here had mistreated him.

Q. This man had mistreated Leeman?

A. Yes, sir, that's right, and me too.

Q. And you too?

A. Yes.

Q. Now I believe——

A. I did everything I could to get Leeman to come down here and testify.

Q. You did what?

A. I did everything I could to get Leeman to come down and testify against him.

Q. All right.

A. He didn't want to do it.

Q. He didn't want to do it?

[1772] A. He didn't want to do it; I didn't think he was going to, I had done quit messing with him.

[1773] * * * * * *

Q. What is your address now?

A. 302 Sentinel.

Q. Sentinel?
A. Right.
Q. Isn't that where Leeman lives?
A. Right.

* * * * * *

[1774] * * * * * *
[1775] * * * * * *

Q. Now in the absence of the jury here, when we were going into some matters preliminarily, you stated that your purpose in being here was to help Leeman and to get, g-e-t, Gary Ethridge, wasn't that your statement?
A. That's it.
Q. Do you agree with me that there is something vindictive about the term "get"?
A. Right.

* * * * * *

[1776] * * * * * *
[1777] * * * * * *

By Mr. LOWERY:

* * * * * *

[1778–1779] * * * * * *
[1780] * * * * * *

Q. Well, the reason you are here is because you are trying to settle an old grudge, are you not, that's your main reason, isn't it?
A. That's right.

* * * * * *

[1781–1791] * * * * * *
[1792] * * * * * *

The COURT. I think I would have to instruct the jury that that statement, whatever it may be worth, his testimony is that it was a mere impression, and he does not state what the conversation was, could be considered only with respect to the defendant Self.

* * * * * *

[1793] * * * * * *
[1794] * * * * * *

The COURT. You want to object to something that's favorable to you? He said he wasn't sure, do you want him to be positive on it?

Mr. BATEMAN. I want him to be positive of anything he testifies to.

The COURT. I don't think that's a good ground for objection, but I'll have to instruct the jury that they have to disregard any testimony by this witness that he had an impression that the defendant Self was involved in an alleged bank robbery. That would be [1795] a conclusion, and you will disregard it.

* * * * * *

[1796] DONALD EDWARD FERGUSON, a witness called to testify by and in behalf of the plaintiff, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

By Mr. KNIGHT:

* * * * * *

Q. Donny, I believe you are a brother of Larry, Kingfish, Ferguson, is that right?

A. Yes, sir.

* * * * * *

[1797] * * * * * *

Q. All right, sir. Now I'm going to ask you whether you know any of the defendents seated at the defense table?

A. Yes, sir.

Q. Would you point out those of the defendants that you know?

A. James Bostic and Eugene Beard, and—that's all I know personally.

Q. That's all you know personally?

A. Yes.

Q. Now do you know whether your brother was acquainted with any of these defendants?

A. Yes, sir.

Q. And which of these defendants was he acquainted with?

A. Well, he knew Eugene Beard and James Bostic, and he knew Gary Ethridge, and he knew Dickie Self, and that's [1798] about all that I know of.

* * * * * *

Q. Did your brother, just speaking generally now, did he discuss some of the offenses he was involved with from time to time with you?

A. Yes, sir.

Q. Do you remember when the robbery of the Bordeaux branch of the Commerce Union Bank occurred last April?

A. Yes, sir.

Q. Did your brother have any conversation with you about that robbery?

A. Yes, sir.

Mr. QUILLEN: Objection.

[1799] * * * * *

(Whereupon, the following conference was held at the bench between the Court, and counsel for the respective parties, out of the hearing of the jury:)

Mr. KNIGHT. This witness will be able to testify that his brother talked to him about the Bordeaux robbery. He would be able to testify that some of the details that Ferguson, that his brother told him, including—wait just a minute—included in these details would be the names of the other defendants.

Mr. BINKLEY. No.

Mr. KNIGHT. Excuse me, Mr. Binkley, I'm trying to finish.

[1800] The COURT. Let him make his statement. You're talking about conversations?

Mr. KNIGHT. Statements that his brother made to him about his role in that robbery.

The COURT. But not detailing what the other defendants said to him?

Mr. KNIGHT. That's right. I'm going to ask him what his brother told him about his participation in that robbery, what he did, and I'm going to ask him specifically, and I have to leave out the names of the other people involved if he knows them, to leave out anybody else's name.

The COURT. What his role himself——

Mr. KNIGHT. Exactly what his role was.

Mr. MERRITT. What about other unnamed people?

Mr. KNIGHT. I'm going to ask him to narrate what he did and of course this is going to involve the fact that other people were there, but I'm going to ask him not to name the other people who were there.

The COURT. What other people did only as a result of Ferguson's observations, not what he said to them.

Mr. KNIGHT. For example——

The COURT. I just want to get it clear.

Mr. KNIGHT. Yes, sir. To be concrete, he will say that his brother told him that he robbed the bank, [1801] and that another man entered with him and not to specify who the other man was.

Mr. BINKLEY. If Your Honor please, I want to object to that. I feel like I was put in a position where I couldn't object to a question. He asked this witness did your brother know certain people, and he named my client. It couldn't be for identification. The jury has already identified my client, and I feel that to allow this witness to testify to this, which is not competent to begin with, it's going to connect two pieces of evidence which are both incompetent, but which put together by innuendo can implicate my client. and I think I'm entitled to a mistrial if he goes into that.

Mr. KNIGHT. Your Honor, I might say this is most of the proof we are going to have in this case, I would say, would be in the form of admissions that individual conspirators made, and unless those statements were made in furtherance of the conspiracy, we will not insist that the other people be named. If they were in furtherance, then we say they are admissible against everyone, but the way this case will be proven is through individual admissions.

Mr. BINKLEY. If that's a——

Mr. WILSON: We can't try a dead man.

[1802] Mr. BINKLEY. When we talk about dying declarations and admissions, we are talking about exceptions to the general rule, and we've got a dead man we cannot cross examine, and we have a situation where I just don't believe that the proof he intends to put on can be competent, and it could——

The COURT. Why isn't it competent?

Mr. BINKLEY. How could it be considered an admission? Ferguson is not on trial. The Court cannot do anything to Ferguson, and the only way his testimony could come in as a witness——

Mr. WILSON. Against him.

Mr. BINKLEY. And the only possible way anything could come in with Ferguson would be a dying declaration, and to offer anything that purports to be an admission of a dead co-conspirator certainly wouldn't be competent, and I think that's elementary, Your Honor.

* * * * *

[1803] * * *

Mr. KNIGHT. I don't propose to try at this point to prove the participation of anyone else by this testimony.

The COURT. What is the purpose of it?

Mr. KNIGHT. I do propose to prove—we have alleged a conspiracy involving—Ferguson is not named as a defendant, but he is named as a co-conspirator, and in describing it, we've got to prove what Ferguson's part was, and the basic way we are going to do this is by his admissions to various people, by what he did, and unless that was in furtherance of the conspiracy, it——

The COURT. You are proving what he did, and you are also proving that he is a co-conspirator through his own words?

Mr. KNIGHT. That's right.

* * * * * *

[1804] * * * * *

[1805] * * * * *

The COURT. Now as I understood the government's position, as a result of the conference here at the bench, the government proposes to offer through this witness statements alleged to have been made by the deceased Ferguson to this witness.

Mr. KNIGHT. Yes, Your Honor.

The COURT. Which statements portrayed or set forth the role which the deceased Ferguson played in a particular bank robbery. That's which one, Commerce Union?

Mr. KNIGHT. Yes, sir, Commerce Union only.

The COURT. What date was that?

Mr. KNIGHT. April 24th.

The COURT. And the witness will not testify to and will not be asked to testify to any persons who were present with him at the time.

Mr. KNIGHT. That's right, no identification of anyone else.

[1806] The COURT. And the purpose, alleged purpose of this testimony is to establish the fact that the deceased, although he of course is not charged in the indictment because of his death, was a participant in the bank robberies as alleged in the indictment?

Mr. KNIGHT. Yes, sir.

The COURT. And was a co-conspirator?

Mr. KNIGHT. That's right, was not—and I might—I want to be clear about this—our position is that statements of these co-conspirators might be admissible either in some situations

to prove their personal participation and nothing further, or if they were statements in furtherance of the conspiracy, then they would be admissible against all of the other conspirators.

We are not saying that these statements are in furtherance of the conspiracy; we are saying in effect they are admissions by one of the co-conspirators as to his participation, just go against him.

Mr. WILSON. And our position——

The COURT. In other words, it's strictly to establish the fact that this one person, and that's the deceased, was a co-conspirator?

Mr. KNIGHT. Yes, sir, and that he did the things——

[1807] The COURT. Did certain specific things.

Mr. KNIGHT. Yes.

The COURT. Well, it wouldn't—these statements wouldn't prove that he was a co-conspirator with any defendant named in the——

Mr. KNIGHT. No, sir, they wouldn't——

The COURT. But they would tend to show that he acted in concert with someone else?

Mr. KNIGHT. Yes, sir.

The COURT. Unidentified.

Mr. KNIGHT. That's correct.

Mr. BINKLEY. If Your Honor please, I would like to state, in order to renew my objection or our objection specifically, we have to relate to the manner in which this witness has been questioned.

To begin with, this witness was asked if his deceased brother knew any of these defendants. He stated that he knew Bostic. He also stated he knew Beard, but he also stated that he knew Bostic.

The COURT. Yes.

Mr. BINKLEY. Now the only purpose this could have, it couldn't be for identification, because I've introduced my client to the jury, they know that Bostic is here and who he is, and then to say that this witness can now testify my brother told me that he did [1808] certain acts toward robbing a bank with some unnamed person, I feel that the manner this is being offered, the government is proving by innuendo and suggestion matters that they have no proof for, and I submit that it's not necessary to the government's case that they establish from

that supposed declaration of a person now deceased, a person that we can't cross examine, that this is not necessary to their case, and the manner in which this testimony has been offered is highly prejudicial.

The COURT. I see. The manner in which it's been offered. Why do you say the manner in which it's been offered? It hasn't been admitted that——

Mr. BINKLEY. I know, but I'm saying the manner in which——

The COURT. Because this witness has said he knew Bostic and Self.

Mr. BINKLEY. Has said that his deceased brother knew them.

The COURT. Well, I——

Mr. BINKLEY. We are putting the jury in the position where we are not naming this man, but we have already told you that he knew him.

Mr. KNIGHT. Your Honor, may I respond to that just a minute?

[1809] The COURT. He said he knew Self and Beard.

Mr. WILSON. He said he knew Ethridge.

The COURT. That doesn't prove that Self and Ethridge and Beard, doesn't prove that they participated with the deceased Ferguson in the bank robbery.

Mr. BINKLEY. I know it doesn't, that's why I'm objecting to it, but I think the manner in which it's been presented——

The COURT. I don't think that's the heart of the matter, but it's a question of whether it's admissible at all or not.

Mr. BINKLEY. The heart of the matter is the fact that I don't see that this testimony is competent, and I think it's clearly inadmissible. It's not a dying declaration.

The COURT. You just stated the question then, you didn't state any reason. I know what the question is.

Mr. KNIGHT. As to what Mr. Binkley says about prejudicing the defendant, the question was asked that—because it is competent for me to show in a conspiracy, that one of the co-conspirators is acquainted with and associated and now as to prejudicing the co-conspirator, there are Supreme Court cases, I believe, and we are entitled to ask this witness the details [1810] of what his brother has told him, including the names as to the other people, subject to Your Honor's instructions that that's admissible only to the person making the statement.

The COURT. How do we get around the hearsay rule?

Mr. KNIGHT. This applies just as it would if Ferguson was a defendant. He's named as a co-conspirator and the fact that he's deceased does not prevent this from being treated as an admission of a co-conspiracy. That's the effect of the Delaney case, admissions by a co-conspirator are admissible to prove his participation.

Mr. WILSON. While we continue this——

The COURT. To prove his, but of no binding effect on the other co-conspirators.

Mr. KNIGHT. Yes, sir.

The COURT. That's on the assumption that you are going to prove a conspiracy.

Mr. KNIGHT. That's correct, Your Honor. It would be a matter of further proof that we will have to get to later in the trial.

* * * * * *

[1811–1822] * * * * *

[1823] * * * * *

Mr. MERRITT This is a little bit similar situation that we have in the Wingo case in terms of the necessity. It's not my fault that he's not here [1824] to testify. We are going to prove in this case, I think we have charged and intend to prove, that he was killed for the very purpose, to keep him from talking, and the defendants who killed him will certainly be receiving the fruit of terrible conduct by keeping this kind of thing out. The law certainly should not reward one who kills another human being in order to keep him from testifying by not letting the jury hear anything he had to say.

* * * * * *

[1825] * * * * *

[1826] * * * * *

Mr. BINKLEY. The only thing I could tell you in reasoning this, the way our law is evolved, there had to be a cutoff point somewhere as far as hearsay evidence is concerned, and since hearsay evidence is not competent evidence and only through these exceptions, I just feel that the Court here has made these exceptions, and I don't feel that it would be proper for us to expand on this.

I don't know the exact reason for the Court's ruling here, but I believe that with one of the conspirators being on the

stand and testifying as to matters that took place during the progress of a conspiracy, that he himself was involved in, would be a little bit different than a conversation they may have had with a third party concerning certain alleged acts that may or may not have happened, which implicate other people who have no right to crossexamine.

* * * * * * *

[1827–1829] * * * * * *

[1830] * * * * * *

The COURT. Well, I think the only safe way to proceed, this is an important point in the trial, the only safe way to proceed, in view of the scanty authority that has been cited to me so far, would be for the government to interrogate this witness along other grounds and recall him after I have had time to go into this question further, because I don't want to let it in if there should be any—if it's not admissible and proper and competent evidence.

These questions sometimes come up, and the Court [1831] doesn't have sufficient time to satisfy itself one way or the other, and I don't think the lawyers do either, for that matter.

Recall the jury.

[1832] (Whereupon the jury returned to the courtroom, and the following further proceedings were had in the presence of the jury:)

The COURT. All right.

By Mr. KNIGHT:

Q. All right, Donny, referring you again to the period of time preceding your brother's death by say a two or three month period, to your personal knowledge, was your brother being contacted during this period either by the FBI or by the police department?

A. Yes, sir.

Q. He was?

A. Yes, sir.

Q. Was this on one occasion or more than one?

A. More than one.

Q. Now during the, say, two-week period preceding your brother's death, did the defendant Beard come by your place of residence?

A. Yes, sir.

Q. At any of the times that the defendant Beard came by, do you recall him asking you anything about your brother's contact with the FBI?

A. No, sir. He asked me did—was my brother in an FBI car at one certain time, and I told him I didn't [1833] know.

Q. You said you didn't know?

A. Yes.

Q. And about when was this that he asked you that question?

A. About a week and a half before it actually happened.

Q. Now during this last two-week period, was the defendant Beard coming by frequently or seldom or what was the situation?

A. Very often.

[1834]

Q. Would you on any of these occasions talk to Beard?

A. Yes, sir.

Q. And what would he say to you?

A. Well, he said that—at one time he said that if my brother didn't start cooperating and getting in touch with Gary Ethridge and get in touch with Gary Ethridge or come out to his house, that something was going to happen to him, and said that it wouldn't be him that Gary Ethridge—it wouldn't be him or Gary Ethridge that done it, but it would be someone that Gary Ethridge would have do it.

Mr. WILSON. We object to that.

Mr. KNIGHT. I didn't understand the basis for the objection.

The COURT. To what?

Mr. WILSON. To what his—what Beard said about Ethridge.

The COURT. Yes, I sustain that as to Ethridge.

Mr. KNIGHT. May it please the Court, I know Your Honor has ruled, but this statement is clearly a statement in furtherance of the conspiracy. Here is [1835] one co-conspirator, Beard——

Mr. QUILLEN. We object to his arguing this point in the presence of the jury.

The COURT. I think the jury is going to have to hear some of the colloquy between the Court and counsel, I can't have them going in and out of the courtroom every five minutes.

Mr. KNIGHT. Is clearly a message.

The COURT. Yes, I think you are right, and I'll overrule the objection and instruct the jury that you will disregard anything that is colloquy between the Court and counsel. These are necessary things that occur between the Court and counsel as to their objections and reason why they think testimony is admissible, so you will disregard any comments by counsel or by the Court in passing upon these particular matters.

All right, sir, go ahead.

By Mr. KNIGHT:

* * * * * *

[1836] * * * * * *

Q. All right. Now at that time, did he make any statement to you about something that had already happened to your brother?

A. Yes, sir.

Q. What did he tell you?

A. I didn't understand it too well, but it was in a way that at one time my brother and some more guys were out riding in the country, and that someone had put a pistol up to his head——

Mr. QUILLEN. We object to that, if the Court please, he didn't understand this, it's a conclusion on his part.

The COURT. You'll have to cross examine the witness. You have the right to cross examine him. Are you undertaking to state now your recollection as best you can what Beard said, the defendant Beard said to your brother?

The WITNESS. Yes, sir.

The COURT. Or said to you?

The WITNESS. Said to me.

The COURT. Said to you?

The WITNESS. Yes, sir.

The COURT. All right, go ahead.

By Mr. KNIGHT:

[1837] Q. Go ahead, Donny, with what you were saying.

A. Said someone had put a pistol up to his head and fired about three times, but it was empty. That's what he said, it was empty, and they was just testing this guy out, the one whoever done it, to see if he was all right.

* * * * * *

[1838–1850]

[1851]

Q. Isn't it a fact that he was blackmailing Mr. Ethridge because of these bank robberies?

Mr. WILSON. Object to that, if Your Honor please.

The COURT. He couldn't say unless he knew; he would have to state a basis.

By Mr. KNIGHT:

Q. Don't you have a basis for believing that?

Mr. WILSON. Objection.

The COURT. No, you——

Mr. WILSON. May it please the Court, he would have to state a specific act.

Mr. KNIGHT. May it please the Court, Mr. Wilson started the specific question about getting money from Mr. Ethridge, and I'm trying——

The COURT. Ask him if he knows the circumstances [1852] about why he was getting money from Mr. Ethridge.

Mr. WILSON. And if he wasn't present, it would be inadmissible.

The COURT. That question would be proper, if he knows the circumstances.

By Mr. KNIGHT:

Q. Donny, do you know the circumstances under which he borrowed this money?

A. I'll put it this way——

Mr. WILSON. Let's see if he knows.

By Mr. KNIGHT:

Q. Do you know the circumstances?

A. Yes, sir.

Q. Go ahead.

A. At one time he got locked up on a bunch of traffic tickets and everything—a bunch of traffic tickets he was involved in, and he got locked up and he sent word by Charlie——

Mr. WILSON. This is compound hearsay.

The COURT. Sustained, strike that testimony.

Mr. KNIGHT. Your Honor, I would like to make this observation.

The COURT. You opened the door to some extent.

Mr. WILSON. Only to this money here, and that's going to be brought out.

[1853] Mr. MERRITT. That's what we are talking about.

Mr. WILSON. I see nothing hilarious whatsoever.

The COURT. I don't say it's hilarious, but you did open the door.

Mr. WILSON. Not by hearsay.

Mr. KNIGHT. May it please the Court, that answer was based on hearsay.

The COURT. Were you present when the money was borrowed by your brother from Ethridge?

The WITNESS. No, sir, I wasn't.

Mr. WILSON. That doesn't make it any better.

The COURT. Then I'll strike it all. You will not consider any evidence about the money based on hearsay.

* * * * *

[1854] PERRY WILSON PATTEN a witness called to testify by and in behalf of the plaintiff, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

By Mr. MERRITT:

* * * * *

Q. I believe you live right now in the house of Gary Ethridge, do you not?

A. That's right.

* * * * *

Q. And are you and Gary Ethridge friends?

A. Well, I thought I was.

Q. Have you been——

[1855] A. Yeah, I would say we were.

Q. Have you been friends for a long time?

A. Yes, sir.

* * * * *

[1856] * * * * *

Q. And on what day did you move into Gary Ethridge's house?

A. It was on a Tuesday.
Q. On a Tuesday?
A. Yes, sir.
Q. Would that have been the 26th of September?
A. I don't know what the date was; I guess it was.

* * * * *

Q. Was it the Tuesday following Larry Ferguson getting killed?
A. Yes, sir, I guess it was.
Q. If that date was the 23rd of September, then that Tuesday I believe would have been the 26th?
A. Yes, sir.
Q. How come, how did you come to move into Gary Ethridge's house?
A. He said he wanted me to move in over there.

[1857] * * * * *

Q. Did he come by your house and talk to you about it?
A. Yes, sir.
Q. Why did he say he wanted you to move in?
A. Well, he said that he was getting tired of the law bothering him.

* * * * *

[1858–1863] * * * * *

[1864] * * * * *

Q. Now that Honda that we are talking about, actually is in your name, isn't it?
[1865] A. Yes, sir.
Q. It's in—in other words, it's titled and registered to you?
A. Yes, sir.
Q. Do you actually own it? Who paid for it?
A. It's not all paid for.
Q. I see. Was the down payment on it made?
A. Yes, sir.
Q. Who made the down payment?
A. Well, I made the down payment.

Q. All right. Where did you get the money?

A. Gary.

Q. He gave you the money?

A. Yes, sir.

Q. Now then, did you pay the—make the regular monthly payments, were they monthly payments?

A. Yes, sir.

Q. Who made those?

A. Gary.

Q. He made the monthly payments?

A. He was going to give me the money every month.

Q. Did he ever—well, did he ask you to have the thing put in your name?

A. Yes, sir.

* * * * *

[1866] * * * * *

Q. Had you ever put anything else in your name [1867] that Gary Ethridge bought?

A. Not as far as I know.

Q. Anything else been titled in your name?

A. There was a gun——

Mr. WILSON. If we are moving into an area that the United States Government has already stated that they would not put into this record, we object to it.

Mr. MERRITT. I just want to find out what else has been put in his man's name, if this was the normal way of handling things, and I think it's proper to bring this out, if this man knows.

Mr. WILSON. After you promised the Court here that you wouldn't do it?

Mr. MERRITT. Mr. Wilson, I have not promised anything in the Court about asking questions to this man.

Mr. WILSON. There was one specific item——

Mr. MERRITT. You may do that, but I don't.

The COURT. I don't recall any promise. Step up here.

(Whereupon, a conference was held at the bench between the Court and counsel for the respective parties out of the hearing of the jury as follows:)

[1868] Mr. WILSON. This .25 automatic that was taken from Gary Ethridge at the time of his arrest. He's liable to tell that.

Mr. MERRITT. I'm not introducing the gun in evidence, may it please the Court. I'm asking this man if he has titled anything else in this——

Mr. WILSON. If he knows anything about it other than that gun, we don't care.

Mr. MERRITT. I'm going to ask him about the gun, a man here indicted for robbing banks and——

The COURT. Which gun is this?

Mr. WILSON. The .25 automatic, he said it would not be put into evidence. The government got it illegally, they would never have known about it.

Mr. MERRITT. It wasn't gotten illegally, and I said I wasn't going to introduce it, and I'm not going to.

The COURT. There was something that came up at the time the arrest was made that he would not show that they found the gun.

Mr. MERRITT. That's right, I'm not going to.

The COURT. But if another witness, if this witness, knows something about the gun——

Mr. WILSON. This witness here is the only witness who the gun was titled to. The purchase of the [1869] gun in the first place was for this boy here.

The COURT. You are telling me facts. What I'm interested in, you said the government made a statement they would not put the gun in evidence.

Mr. WILSON. That's right.

The COURT. What I understood, I may be wrong, but I thought I understood was that they would not undertake to show that at the time of the arrest that this defendant had a gun of some description, that's what it was.

Now does that preclude them from showing, and I understood the reason for that was that they had no search warrant, but now if this witness knows something about a gun, that's a different picture, entirely different.

Mr. WILSON. They wouldn't have known about the gun themselves if they hadn't obtained it illegally.

The COURT. Do I know that? They may have gotten it from this witness.

Mr. WILSON. No, sir, when they found it, they traced it, and it was a legally purchased gun, and they would never have known if they hadn't obtained it illegally.

Mr. MERRITT. Didn't obtain it illegally.

The COURT. Did you seize it?

[1870] Mr. MERRITT. Yes, sir. I'm not going to offer the gun, because we don't have proof that this gun was used in connection with these robberies, and I thought it would be sort of prejudicial to offer a gun in evidence that we couldn't prove that had been used——

The COURT. If it would be prejudicial in that case, it would be prejudicial here.

Mr. MERRITT. No, no, a piece of demonstrative evidence like the gun, like they object to the pictures, but they'll have to let him describe it. It seems to me it wouldn't serve any purpose to introduce the gun into evidence as a piece of demonstrative evidence, but I want to ask this man about having the gun titled in his name for Ethridge. I think it's directly relevant to the conspiracy.

The COURT. It might have been, but you got knowledge of that as a result of——

Mr. MERRITT. But I stated to the Court that we were not saying, no admission that the search and seizure was illegal. We can go into that right now if the Court please.

The COURT. This gets back to the question of probable cause?

Mr. MERRITT. Yes, sir.

The COURT. I don't understand why you wouldn't [1871] offer it as demonstrative evidence if it is legal, why did you have any fear?

Mr. MERRITT. I would like to offer it as demonstrative——

Mr. WILSON. It was illegally——

The COURT. It's about time to excuse the jury. Let's excuse the jury and talk about this.

The jury will be excused until, as I told you, we would adjourn at one o'clock, and it's practically that time now, and we have some matters we have to discuss out of the presence of the jury, so the jury will be excused until next Monday.

(Whereupon, the jury was excused from the courtroom, and the following further proceedings were had in the absence of the jury.)

The COURT. Now is the purpose of this only to show about the gun or do you have any other items?

Mr. MERRITT. No, sir, just to show about the gun.

Now with respect to the matter we were talking about at the bench, I stated to the Court that at that time, I did not intend to introduce the gun in evidence.

Now, in view of what Mr. Wilson says, I have changed my mind about that, and we would intend to [1872] introduce that gun in evidence, and would like for the Court to take that matter up at this time.

The COURT. All right, go ahead.

On what theory do you say it's admissible?

Mr. MERRITT. On what theory is the gun admissible?

The COURT. Yes.

Mr. MERRITT. At the time of the arrest of Eugene Beard, the gun was found on the person of Gary Ethridge.

The COURT. What was the description of the gun?

Mr. MERRITT. Excuse me just a moment.

.25 caliber automatic with a gold trigger.

Mr. WILSON. Is this connected, part of it would be, to the illegality of the search, but secondarily, would it show on the guilt or the innocence of any of these overt acts in the conspiracy or any of the bank robberies? There's no allegation whatsoever, and he's not prepared to show that this gun was used in any bank robbery whatsoever.

Mr. MERRITT. No, sir, as I said at the bench, I am not prepared to show, and will not show, that the gun was used in a bank robbery, but I will show that here is a man who is with Eugene Beard a few hours after [1873] the death of Ferguson, has a gun on him, which gun had been put in this man's name, but actually bought by this man, and this man is charged with a conspiracy to rob banks, and is charged with counselling and inducing the murder of Ferguson, and I think under the circumstances, the jury would be entitled to make an inference that it's likely that a man who has a gun on him, in his pocket, sitting in a room with Eugene Beard, shortly after this and all of the other circumstances we have shown here in evidence, plus the fact that he concealed the identity of the owner of the gun by having it licensed in someone else's name would allow the jury to make certain inferences with respect to the conspiracy.

The COURT. What was the date of this?

Mr. MERRITT. The arrest?

The COURT. Yes.

Mr. MERRITT. It was the 23rd, Saturday the 23rd, the same day as the killing. The arrest took place in the afternoon, about three o'clock. Mr. Goodwin testified he was there.

Mr. WILSON. We maintain, if Your Honor please, that the defendant Beard was arrested there, that it did not become necessary, under no circumstances, to make a search of either the person or the property or [1874] the home of the defendant Ethridge. He was not under arrest, nor was he charged. If he was under arrest, he was not under arrest for any of the matters and things contained here, and that he was illegally searched and illegally detained, and this gun has no probative value other than to cast aspersions against this defendant that he's some sort of a desperado.

Mr. MERRITT. That's right.

Mr. WILSON. I think you would admit that.

Mr. MERRITT. I think the jury is——

The COURT. This was the same time that Beard was arrested?

Mr. MERRITT. Yes, sir, at exactly the same time.

The COURT. And that was in connection with the killing?

Mr. MERRITT. Yes, sir.

The COURT. Was Ethridge arrested at that time?

Mr. MERRITT. No, sir.

The COURT. But you couldn't search him.

Mr. MERRITT. Oh, yes, sir. Yes, sir. Where a man is arrested for an offense, and he is in an area, close area with other people who are suspected to be criminals and have had something to do with offenses, as a protective matter, it's legitimate for an FBI [1875] agent or a law enforcement officer to search the other people for weapons.

Suppose an officer walks into a room with ten people all of whom are suspected of criminal activity, and the purpose of that entrance is to arrest one of them, but suppose during that arrest, one of the others pulls out a gun and shoots the law enforcement officer, which has happened many, many times.

The cases say, may it please the Court——

The COURT. Why did you state to the Court that you were not going to offer this gun in evidence? That puzzles me somewhat, because if it was admissible when you made that statement or admissible now, it was admissible when you made that statement.

Mr. MERRITT. Yes, sir, it was admissible then. I told the Court at that time that it was admissible in evidence, but I didn't think I would use it, and I didn't intend to use it, and I didn't at that time, and frankly, I think I was in error about that. I should have intended to.

The COURT. Well, it's not—it will not be in any way connected with the count eight.

Mr. MERRITT. Oh, no. Oh, no.

The COURT. The killing count.

Mr. MERRITT. Oh, no.

[1876] The COURT. And then you say it has some materiality or relevance to the conspiracy, the conspiracy and bank robbery counts.

Mr. MERRITT. Here is a man——

The COURT. Here is a man armed, in his own home, in his own person, and weapons were allegedly used in connection with these bank robberies.

Mr. MERRITT. Yes, sir.

The COURT. But you have no way of identifying any weapon used in a bank robbery with this particular weapon.

Mr. WILSON. Very unprobable that it would in any bank robbery, that anyone would go into a bank with a little .25 caliber automatic. As a matter of fact they know and have a description of the weapons used in these bank robberies, and we also have already precluded the fact that it was used in a homicide, because that was described to be an old model .38 caliber weapon.

Then the only purpose that this possible could be used for would be to show that here is a person who does go armed. That would be the only purpose that it—and it would be neither——

The COURT. If that's the purpose of it, why wouldn't that be material?

[1877] Mr. WILSON. Because, if Your Honor please, it was illegally taken.

The COURT. You are predicating your objection not upon the ground of relevancy, but the illegality of the search?

Mr. WILSON. Both. Most specific on the illegality, but both. It has no evidentiary value here whatsoever, and a man is entitled to have a gun in his own house, but it would cast some aspersions upon him that would have to be removed from the jury's mind. There were others there in that house on that occasion, and——

Mr. MERRITT. They were searched too. You can imagine, if that's not a legal search——

Mr. WILSON. What predicate do you have for that being a legal search?

Mr. Merritt. When a law enforcement man comes into arrest a man in the group of hardened criminals, he——

Mr. Wilson. This man has not been convicted of any crime whatsoever.

The Court. I can't assume that he's a criminal or hardened criminal. The question is whether you had probable cause to enter this residence and to make an arrest for a felony, and if in the course of making the [1878] arrest, you had the right to make an incidental search.

Mr. Bateman. If Your Honor please, they weren't concerned with probable cause; they searched this defendant's automobile which was standing in the driveway.

The Court. They had evidence that the killing had taken place, and that pointing to a particular individual who had almost immediately made his way to the defendant's home. Ethridge's home.

Mr. Binkley. If Your Honor please——

The Court. Under those circumstances, cannot an officer enter a residence and make an arrest for a felony, a murder?

Mr. Wilson. He can search that individual, and search——

The Court. And search no one else?

Mr. Wilson. And search the premises if that premises is the premises of the person who is being arrested, but not without a warrant as to the others.

The Court. Well, I'm not sure—you are making a lot of categorical statements about the law, and I'm not sure.

Mr. Wilson. I think that's elementary.

The Court. How do you answer my hypothesis that this is a felony, they had probable cause to [1879] believe it had been committed by a man who immediately made his way to the defendant's home.

Mr. Wilson. It was some nine hours——

The Court. You mean to say that can't go there and make an arrest?

Mr. Wilson. They have a perfect right to make an arrest.

The Court. Without a warrant?

Mr. Wilson. I'm not saying without a warrant. Let's just say this warrant is good which we are not admitting.

The Court. I understand that.

Mr. Wilson. But for purposes of argument, say it was good, who were they directed to arrest? If there was no altercation,

if there was no reason for searching anybody else, if the defendant Beard was willing to come with them willingly and go out the door there, they had no reason to search anyone there whatsoever.

The COURT. Well, what do you say to Mr. Merritt's proposition that if the person they suspect and have reason to believe was the assailant, the guilty party in the murder, was in the home of someone else, and in the presence of someone else who possibly could be armed, that it would be a necessary thing to search them to protect themselves for one thing?

[1880] Mr. WILSON. Didn't prove to be necessary.

The COURT. Whether——

Mr. MERRITT. That's because they searched them perhaps.

The COURT. It turned out he did have—was armed.

Mr. WILSON. There's a further predicate to this situation.

The COURT. Was this a loaded gun at the time?

Mr. MERRITT. Yes, it was.

Mr. WILSON. I'm allowed to rely upon the statements of the United States Attorney that this gun would not be introduced into evidence.

The COURT. Well, I think—he did make that statement because it came up on pre-trial, and if you were in any way prejudiced by his changing his mind, I'd like for you to point it out.

Mr. WILSON. I think it's prejudice for anybody at any time to be found to be carrying a gun.

The COURT. I don't mean prejudiced in that sense. Of course if I admit it. I will admit it on the theory it's relevant. I mean the fact that he's changed his mind, and decided to introduce it. You haven's lost any witnesses or——

Mr. WILSON. I haven't gained any though from [1881] the standpoint of knowing the history of the gun. This witness is not prepared to testify that Ethridge bought that gun and registered it in his name.

The COURT. You know what the witness is prepared to testify?

Mr. WILSON. I feel that I do.

The COURT. Then what are we arguing about?

Mr. WILSON. The admissibility of the gun or any mention——

The COURT. If he's not prepared to testify to that, I don't have to rule on the point.

Mr. WILSON. Your Honor is misunderstanding me. I think the United States Attorney should be—should tell the Court now whether he is prepared to prove that Gary Lee Ethridge purchased this gun and put it in this boy's name.

Can you?

The COURT. That's the statement he made to me.

Mr. MERRITT. Where is the Jencks statement?

Mr. WILSON. And we of course are further prejudiced by the fact that we do not have witnesses subpoenaed to come here as to the circumstances surrounding this search and this gun would be—would come up as a matter of materiality.

Mr. MERRITT. We have witnesses right here who [1882] participated in the search.

Mr. QUILLEN. The defendant's witnesses are not here, may it please the Court.

Mr. MERRITT. May it please the Court, I said at the pre-trial conference at this time we did not intend to introduce the gun into evidence, and I—do you have the——

The COURT. Let's get down to the immediate problem. You posed to this witness a question whether or not any other items of property were bought by Ethridge and placed in this witness' name.

Mr. MERRITT. Yes, sir.

The COURT. And I understood from the conference at the bench that you intended to direct this to this gun.

Mr. MERRITT. Yes, sir.

The COURT. And Mr. Wilson speaks with apparent confidence that this witness will not so testify, so if he will not so testify, there's no point in my wasting——

Mr. MERRITT. That's my understanding of his testimony on the basis of this Jencks statement he gave to the FBI.

The COURT. Ask him what he testified and let's clear it up.

[1883] By Mr. MERRITT:

Q. Was this gun purchased and put in your name, this .25 caliber gun?

A. Yes, sir.

Q. Who purchased it?

A. Well, I don't know.

Q. Did you purchase it?

A. No, sir, I didn't purchase it.

Q. But it was placed in your name?

A. Yes, sir.

Q. And found on the defendant Ethridge at the time of the arrest.

Mr. WILSON. Do you know whether or not it was placed in your name, Perry, or is that just something you heard?

The WITNESS. At the time when they asked me about it, I didn't know what they were talking about, but I got to thinking about it, and that gun, back before Gary and them left for Florida, I mean sometime before they went, I mean, I don't know, he was talking about there was a gun store down there, and guns was cheap, and I said I'd like to have one for some reason, why I wanted it, I don't know. So the next thing I knew, they had gone to Florida, and he come back, and he said, I bought you a gun down there, and said I done——[1884] I don't know whether I ought to have done it or not, but I put it in your name, and I didn't have the money to buy it, and it wasn't the kind I wanted to start with, and after that, that's the—that's the last I heard of it until they asked me about it, and I had forgot about it.

The COURT. Why isn't this competent testimony, aside from the introduction of the gun itself as an item of demonstrative evidence? I don't see that—if this is competent, we can avoid the whole question about the search just by leaving the gun out of it.

Mr. MERRITT. No, sir, I'd like now——

The COURT. I don't want to waste time on a voir dire examination about the legality of this search. They have to hesitate and interrupt the proceedings Monday to take their proof in addition to their proof on the circumstances under which this arrest was made.

Mr. BINKLEY. May it please Your Honor, has Your Honor declared this to be relevant evidence? I can't see that this is relevant at all.

The COURT. It seems to me it is. It shows the relationship between these parties for one thing, the witness and the defendant, the dealings between them, the fact that he was buying property in his name and paying for it himself, and the fact that he did go armed, [1885] was armed, and had a loaded gun.

Mr. BINKLEY. How does that bear on the issues?

The COURT. It shows the relationship between these two parties.

Mr. BINKLEY. That's not an issue in this case. How is that an issue?

The COURT. Shows the confidence that one had in the other.

Mr. WILSON. This boy here is not charged.

The COURT. I know he isn't charged, you don't have to remind me of the obvious, it shows the relationship between the defendant and this witness, it has a direct bearing upon the question of his credibility, what he's saying against the defendant, apparently he has such confidence that he bought property and placed it in his name, and now he's testifying against him, that's an obvious circumstance that ought to go to the jury, the weight and value of his testimony.

Mr. BINKLEY. Is Your Honor saying that, because a man in his own home has a weapon that's loaded——

Mr. MERRITT. In his pocket.

Mr. BINKLEY. (Continuing——that he is going around armed?

The COURT. I'm saying that he's armed to the extent that he's, in his own home with a loaded gun, and also I'm saying that it shows the confidence which [1886] existed at that time, the dealings and relationships between the defendant and this particular witness, the fact that he would purchase this item of property which happened to be a gun.

Mr. BINKLEY. If Your Honor please, would that bear on anything other than the credibility of this witness?

The COURT. Well, if it bears on credibility, it's admissible, if for no other reason.

Mr. BATEMAN. Your Honor, the government would never have known that this gun was bought and registered in this man's name if it had not been for this search.

Mr. WILSON. That's the only thing I can legally predicate the situation on at this time.

The COURT. You tell me how you can show, weaken the government's case that there was probable cause to make this arrest. What witnesses will you subpoena here Monday to come in here to show that they did not have information that Eugene Beard shot Larry Ferguson, that they did not have information that he entered the defendant Gary Ethridge's home, and that they did not come there and make the search?

Now what else can you offer? I want you to tell me the witnesses.

Mr. WILSON. All I can offer, if Your Honor [1887] please, is that they came there with the primary purpose with the warrant, to arrest Mr. Beard.

The COURT. That's already been covered.

Mr. WILSON. Secondly, without any reason or cause, that they searched other members who were there, and subsequently turned them loose.

Mr. MERRITT. We can stipulate that.

Mr. WILSON. And further, they are now offering in evidence, which they stated they wouldn't use, because it had no bearing upon the robberies or the murder or the bank robberies, and now the only reason they want to put it in, is to——

The COURT. If he hadn't had the gun on him, the evidence would never have been offered.

Mr. WILSON. If they had never made an unnecessary search——

The COURT. You are saying it's illegal; I'm saying as of now it seems to me it was legal, but I'll reserve a ruling until Monday and you can re-offer his testimony about the gun, and I'll rule on it at that time, but I don't see any prejudice in the fact that the government has changed its mind and is offering this proof, and I don't see any possibility that the defendants could bring in any evidence that would throw any light upon the circumstances surrounding the [1888] search that isn't already in the record.

Mr. QUILLEN. Yes, sir, if the Court please. We would want to offer Mrs. Ethridge's father as a witness to show the manner of entry which we insist was unlawful.

The COURT. I'm not going into that.

The manner of entry, what do you mean by that?

Mr. QUILLEN. That the officers just forced themselves right on in, in such a manner as to make it an unreasonable entry, and that again, if the Court please, it was a—what we insist, an entry made by a sheriff who was the leading officer out of his bailiwick.

The COURT. That's already been gone into.

Mr. QUILLEN. Out of his jurisdiction.

Mr. WILSON. That's only one other matter.

The COURT. You can bring the father in, and I'll hear him first thing Monday morning just on that one point before this witness is examined.

Mr. WILSON. If this is going to be a reflection upon this witness' character——.

Mr. MERRITT. No, sir.

Mr. WILSON. It's not in issue until he takes the witness stand.

Mr. MERRITT. It's not for character proof.

The COURT. It's not offered for character [1889] proof.

* * * * *

[1890–1893] November 27, 1967

[1894]

(Tenth day of trial)

(Whereupon, at 9:10 o'clock a.m., Court was reconvened pursuant to the adjournment, and the following further proceedings were had in the absence of the jury:)

* * * * *

[1895] * * * * *

[1896] GEORGE BRATTEN, JR., a witness called to testify by and in behalf of the defendants, in the absence of the jury, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

By Mr. WILSON:

Q. Mr. Bratten, what is your relationship to Mrs. Georgia Lee Ethridge?

A. She's my daughter.

Q. Mr. Bratten, where do you work, sir?

A. Avco.

Q. On the morning of September the 23rd—were you in the Ethridge home on September the 23rd?

A. I sure was.

Q. What time did you arrive there?

A. About twenty minutes until two.

Q. What was your purpose in being there?

A. Go over there and fix a gutter on the house.

Q. And while you were there, was an arrest made?

A. Yes, I was.

Q. State what you observed and who all was there.

A. Well, I was there, sitting next to the bar there in a chair. My daughter was fixing to go to the store, and get something to make some sandwiches with. Her husband give her a check and I told her I wanted to see the check, and I [1897] handed it back to her, and I happened to turn around and look at the door and told her Georgia, there's someone at the door, and about fifteen people broke in the house, come in the house and throwed shotguns on us and told us to line up against the wall.

Q. At any time did anyone display or read a warrant?

A. No, they did not.

Q. Did they search the people who were there?

A. Searched everyone but me.

Q. Did they search the house?

A. They searched the house.

Q. Now did you at any time observe a pistol there?

A. Yes, there was a pistol laying on the bar, and I told my son-in-law to pick it up before the kids get ahold of it.

Q. That was how long before the officers arrived?

A. I'd say it was about twenty minutes.

Q. And this pistol, could you describe it?

A. It was a little bitty short pistol (indicating).

Q. And some twenty minutes before the officers arrived, why you had advised him to pick it up?

A. I sure did.

Q. For fear the child would get it?

A. Yes, sir.

Q. Were you there when Eugene Beard arrived?

[1898] A. I was there before he ever come in.

* * * * *

[1899] * * * * *

CROSS EXAMINATION

By Mr. MERRITT:

* * * * *

[1900] * * * * *

[1901] * * * * *

Q. Do you recall Officer Goodwin of the TBI?

A. Yes.

Q. He's testified up here that—on his examination several days ago—that Mrs. Ethridge came to the front door, opened the door, and he said, my name is Goodwin with the TBI, and I've got a warrant for Eugene Beard.

A. No, nobody said nothing. They come in there and said everybody up against the wall and throwed guns on us.

* * * * * *

[1902–1904]

[1905]

Mr. QUILLEN. Sheriff Hankins has said that he had the warrant.

Mr. MERRITT. Mr. Goodwin said after they got inside, that he gave the warrant to Sheriff Hankins.

The COURT. Well, that can be clarified.

Now what is the objection to this warrant? I never have fully understood the defendants' position. They say the warrant isn't any good, and I've checked it with the Tennessee Code, and it seems to comply with all the requirements.

Mr. QUILLEN. It doesn't set forth any facts.

The COURT. It certainly gives notice to Beard what he's charged with in the affidavit part of it. The offense of murder in the first degree upon the body of James Larry Ferguson, and signed by the affiant and the justice of the peace.

That certainly gives him notice of the fact that—of the offense he's charged with.

* * * * * *

[1906–1908]

[1909]

The COURT. I have some doubt about the admissibility of this weapon. I think the arrest itself was valid on the basis of probable cause without a warrant, and on the basis of a warrant.

I want to hear further about the circumstances surrounding the entry of the home. I think we ought to have more facts on that from the sheriff, but there doesn't seem to be much doubt about the validity of the arrest, and that means that when they made the arrest of Beard, they could testify, the officers could, where the arrest was made and who was present. That

necessarily identifies Ethridge as being one of the parties present.

I think that's competent. Now whether or not, as incident to that lawful arrest, they could search Ethridge and then use what they found against Ethridge in an unrelated crime, that is a crime which is not one which was involved in the arrest at the time, that's the trouble I'm having with that, is whether or not there was a sufficient nexus to establish the admissibility of this weapon.

[1910] Probably they had a right to search for self protection, in other words, to see whether or not anybody there was armed so as to protect themselves, but they were not looking at that time—they were not searching, or what they found rather on Ethridge was not in any way related to the crime which they thought at that time was the only crime that had been committed, and one they were making the arrest for.

Mr. MERRITT. May it please the Court, if there is no problem with the search, as I believe Your Honor has indicated there isn't, that the entry was lawful, and they had a right to search to protect themselves, and they found this weapon, then the only question on the admissibility of the weapon would be really one of relevancy.

* * * * *

[1911] * * * * *

The COURT. It's relevant all right. I don't have any doubt about that, if a man is armed.

Mr. MERRITT. I don't see——

The COURT. Any circumstance to the jury—but it's not relevant in the case for which the arrest was being made. It has no bearing on that case.

* * * * *

[1912–1913] * * * * *

[1914] * * * * *

Mr. BINKLEY. If Your Honor please, this doesn't bear directly on my client Bostic other than [1915] the fact that he's here being tried, and I just believe that this has no probative value to the issues here involved. I think if they had found this man with a switchblade knife in his pocket or anything else.

that doesn't bear on the crimes that are charged here, and in fact, the district attorney stated that he had not intended to even use this evidence, and I feel that this is just another instance where trying all of these cases together is fraught with danger of prejudice anyway, and this is just another instance where if this gun is allowed to come in, this testimony having no probative value with the issues involved here, this is throwing further prejudice on my client through a matter that doesn't bear on the issues involved in this case, and I would like to object to its admissibility on the ground of relevancy, because I can't see how it is revelant at all.

Mr. MERRITT. I can't see how it would in any way prejudice his client. His client wasn't even there, was in the penitentiary, had been picked up a long time before that, so whether Ethridge had a gun on him, loaded gun on him at that time has nothing to do whatever with Bostic.

Mr. BINKLEY. Well, if Your Honor please, I just don't know how Mr. Merritt is going to argue his case, [1916] but I'm afraid that he's going to probably have some trouble separating these wrongful acts when he starts arguing it, and I feel like it's got to affect my client.

[1917–1919]

[1920]

The COURT. And I'll research ruling on this weapon. The witness can easily be recalled, but I'm going to have to be convinced that it is admissable evidence, and I'm not so convinced at this time.

[1921]

AMBROSE R. MOSS a witness called to testify by and in behalf of the plaintiff, after having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. KNIGHT:

Q. Mr. Moss, you are an agent with the Tennessee Bureau of Identification?

A. That is correct, sir.

Q. I believe you participated in the arrest of Eugene Beard on the 23rd of September.

A. That is correct, sir.

Q. That was out at Gary Ethridge's house?

A. That is correct, sir.

Q. Would you tell the Court what portion of the [1922] house you came in, what door did you come in and who was with you, and what were the circumstances?

A. It was in the front door of the house. With me was Agent Goodwin, FBI Agent Darrell Hamar, and the sheriff of Wilson County.

Q. Now what happened when you all got to the door?

A. We knocked on the door, and it was approximately a minute or so before the door was opened, and it was opened by a woman I later learned to be Mrs. Ethridge. We advised her we were state officers, and she stepped back, and we stepped into the house.

Q. All right. Now did anyone have a warrant, an arrest warrant at that time?

A. Agent Goodwin had a warrant, murder warrant, sir.

Q. Do you recall whether any reference was made to that warrant when you entered the house?

A. Not to my knowledge. I don't recall, sir. I immediately went to the right into which was the bedrooms, and Agent Goodwin and I think Mr. Hamar went to the left.

* * * * *

[1923]

* * * * *

Q. Did you conduct any search?

A. Yes, sir, I conducted a search of Mr. Ethridge and Mr. Self.

Q. What was the result of searching Mr. Ethridge?

A. I removed a .25 Browning automatic from his left front pocket, sir.

* * * * *

[1924]

* * * * *

By Mr. KNIGHT:

Q. Was the gun loaded, Mr. Moss?

A. Yes, sir, it was loaded.

Q. What was your purpose in conducting this search?

A. We were raiding a place where a murder suspect was known to be, and while there, for protection, we searched everyone there.

Q. A matter of self protection?

A. That is correct, sir.

* * * * * * *

[1925–1928]

[1929]

The COURT. No, go into the other matters, and I'll reserve ruling on the admissibility of this [1930] weapon.

* * * * * * *

(Whereupon, the jury returned to the courtroom, and the following further proceedings were had in the presence of the jury:)

PERRY WILSON PATTEN (recalled).

* * * * * * *

[1931–1932]

[1933]

CROSS-EXAMINATION

* * * * * * *

[1934–1937]

[1938] Q. Mr. Patten, when you testified on Friday that the man who came there to Leeman's home, you thought it was Eugene Beard.

A. Yes, sir, that's what I said.

Q. On Friday you were not certain that it was Eugene Beard?

A. Well, at the time I might not have been.

Q. Well, has anything developed over the weekend to convince you that you should be stronger in your testimony about that?

A. Well, yes, sir.

Q. Something has happened?

A. Well, yes, sir, I guess it has.

Q. Did you talk with someone?
A. I talked to Mr. Merritt.

[1939–1943]

[1944] REDIRECT EXAMINATION

By Mr. MERRITT:

Q. Perry, have I ever told you or indicated to you in any way whatsoever to get up here and tell anything but what you knew to be the truth?

A. No, sir, you just said to tell the truth.

Q. These facts you have told up here today, are they the truth?

A. Yes, sir, they are.

(Whereupon the jury was excused from the courtroom, and the following proceedings were had in the absence of the jury:)

[1945]

JOHN LEEMAN

DIRECT EXAMINATION

By Mr. MERRITT:

[1946]

Q. How did you come to testify in this case; what happened about that?

A. I came up here to see you, and you offered to drop the indictment against me.

Q. If you would testify in the case?

A. Right.

Q. Did you ever tell me anything that your lawyer, Mr. Quillen, told you about?

A. No, sir.

Mr. MERRITT. That's all.

CROSS EXAMINATION

By Mr. QUILLEN:

Q. Mr. Leeman, of course I've been your attorney since sometime in March of 1967, March or April, is that correct, in other matters?

A. Yes, sir.

[1947–1948]

[1949]

Q. Now you never did tell me, did you, Mr. Leeman, until some three weeks after the arraignment, that you had been talking with—to the FBI agents and to the United States Attorney?

A. Mr. Merritt told me not to.

Q. Told you not to tell me?

A. Yeah.

Q. Did he tell you that the first meeting you had with him?

A. I don't think so.

Q. Did the agents themselves tell you not to tell me that you were talking to them?

A. No.

[1950]

Q. Now I notice—there were some rather remote theories discussed between us about who else might have been in the Wilson—in the Statesville area of Wilson County on the night of September 23rd, wasn't there?

A. Yeah.

Q. Now did you ever tell Charles Bobo about any such remote theories as might have been suggested?

A. As I recall, the best I recall, Bobo and I didn't discuss that matter.

[1951]

[1952]

Q. And of course the fact was that this information was getting to the government by what you were telling them?

A. Mr. Merritt called me and cautioned me on a number of occasions not to say anything that you and I had discussed, Mr. Quillen, said he didn't want to hear anything about what we had been talking about.

Q. That's true, but still some of these matters in your—what, about a ten-page statement here that you have made, eight pages, some of these matters you discussed with him of course have details of things that we did discuss, isn't that correct?

A. Not much of it.

[1953] Q. But some of it does, isn't that right?

A. I didn't tell him anything that you had told me.

Q. Well, you didn't tell him directly anything that I told you.

A. I didn't tell him anything that you told me.

[1954]

[1955]

(Whereupon, a short recess was taken, after which the following further proceedings were had in the presence of the jury:)

[1956] JOHN W. LEEMAN having been previously sworn in the absence of the jury, upon the return of the jury to the courtroom, was examined, and testified as follows:

DIRECT EXAMINATION

By Mr. MERRITT:

[1957]

Q. Now, Mr. Leeman, the indictment in this case charges you with conspiring to rob and being involved in the robbery of the Bordeaux branch of the Commerce Union Bank on April 24, 1967, is that true?

A. Yes, it is.

Q. Do you know each one of the defendants in this case?

A. Yes, sir.

Q. Do you know Mr. and Mrs. Ethridge and Sammy Ray Cole, and Dickie Self and Eugene Beard and James Herman Bostic?

A. Yes, sir.
Q. Did you know James Larry Ferguson?
A. Yes, sir.

[1958] Q. When did you get to know James Larry Ferguson?
A. It was about ten days or two weeks before the Bordeaux bank was robbed.
Q. And where did you meet him?
A. Over at Gary Ethridge's house.
Q. And you met him at Gary Ethridge's house?
A. Right.

Q. And you met him about ten days before the Bordeaux bank was robbed?
A. Yes, sir.
Q. Is that correct?
A. Yes, sir.
Q. How long have you known Gary Ethridge?
A. About ten years.
Q. How about his wife?
A. About the same.
Q. How long have you known the defendant Sammy Ray Cole?
A. Since about the first of the year, I guess.
Q. Since about the first of the year?
A. Yes, sir.

[1959] Q. Where did you meet him?
A. Around over at Gary's.
Q. Gary Ethridge's house?
A. Yes.
Q. Is that correct?
A. Yes, sir.
Q. How long have you known the defendant James Richard Self, Dickie Self?
A. About the same period of time.
Q. Since about the first of the year?
A. Yes, sir.
Q. Where did you meet him?
A. Same place.
Q. How long have you known James Herman Bostic?
A. I run into him about three or four days after Ferguson.

Q. Three or four days after you met Ferguson?
A. Right.
Q. So that would have been three or four days or a week before the Bordeaux bank was robbed?
A. Approximately, yes, sir.
Q. And where did you meet him?
A. Gary's.
Q. How long have you known the defendant Eugene Beard?
[1960] A. Met him about three days after the Bordeaux bank or a week.
Q. About three days afterwards?
A. Or about a week, I guess.
Q. And where did you meet him?
A. Gary's.
Q. Who is living in Ethridge's house now, do you know?
A. Mr. and Mrs. Perry Patten.

* * * * *

Q. All right, sir. Now you mentioned that you met, you said that you met all of these defendants here at Gary Ethridge's house. Did you go over there pretty frequently in the last few months or so?
A. Yes, I did.
Q. When did you start going over there pretty frequently?
A. Around the first of the year.
Q. Around the first of this year, 1967?
A. Yes, sir.
Q. How frequently? When you say you started going over there pretty frequently around the first of the year, how frequently are we talking about?
[1961] A. Two or three times a week, we were both off on medical leave at Ford and were running around together.
Q. And you and Gary were both off on medical leave from Ford and were running around together?
A. Yes, sir.
Q. And you would go over there two or three times a week?
A. Right.
Q. Now while you were over at Ethridge's house pretty frequently starting around the first of the year, did you ever hear the subject of bank robbery mentioned?
A. Yes, sir.

Q. How frequently?

A. Every once in a while. I don't know how frequently.

Q. Just one or two occasions or many occasions?

A. Well, when I first started going over there, there wasn't much talking about it.

Q. When you first started going over there, wasn't much talk about it. When did the talk about it start?

A. The first I heard about it was he was telling me about some gentleman driving in a pink car at the Bordeaux bank.

Q. When you say "he", you mean Gary Ethridge was talking about a man driving a pink car and robbing the bank?

[1962] A. Yeah.

Q. What did he say?

A. He said somebody not driving a pink car, would be an easy bank to rob.

Q. Said the bank would be an easy bank to rob?

A. Right.

Q. What was it he said about the pink car now? Was he referring to the fact that this Bordeaux bank had been previously robbed?

A. Said it must have been a nut driving it.

Q. Who robbed the bank?

A. Right.

Q. Why did he think the fellow was a nut?

A. Well, a pink car looked like pretty easy to follow and see.

Q. And so he said that the bank would be pretty easy to rob if you did it right?

A. Right.

Q. Now that was the Bordeaux bank of Commerce Union, Bordeaux branch of the Commerce Union Bank?

A. Yes, sir.

Q. This conversation about the bank having been previously robbed, and it would be easy to rob, how long was that before the robbery that that took place?

A. I don't know exactly, two or three months, four [1963] months maybe.

Q. All right, sir. And then how and in what connection did this talk about bank robbery over there get started?

A. We got arrested for some other charges here in Davidson County, and had some unfortunate experiences with some merchandise—

Q. Had some unfortunate experience with some merchandise. You and who else had gotten arrested on that?

Mr. WILSON. Objection.

Mr. MERRITT. This is part of the reason for the conspiracy.

The COURT. Is that one of the defendants you are referring to?

Mr. MERRITT. Yes, sir.

The COURT. Overruled.

* * * * *

Q. Who had gotten arrested on that merchandise thing? Just—had some of the defendants gotten arrested?

A. Yeah, me and Gary had and some other folks.

Q. What came up about that merchandise and getting arrested on that, in connection with the bank robbery?

A. Well, we got to talking about it, and if we was going to do any more criminal work, looked like stealing [1964] money would be better to steal than merchandise. You can't get caught with money hardly.

Q. Why can't you get caught with money rather than merchandise? What's the reason for that?

A. Money is hard to trace.

Q. And so you had discussions with Gary about starting to rob banks?

A. We just talked about it, Gary and I did.

Q. You and Gary talked about it?

A. Right.

Q. And when again was this idea about getting in the business of robbing banks first brought up, approximately?

A. After we were arrested.

Q. After you were arrested for this merchandise deal?

A. Yes, sir.

Q. When was that?

A. I don't recall the date.

Q. Well, would it have been February, March, along in there, or before?

A. I believe it was in March.

Q. In March?

A. Yes, sir.

Q. After that time was when the discussion started about bank robbery?

[1965] A. Yes, sir.

Q. Did you talk about, with Gary Ethridge, the part that he expected to play in any bank robberies?

A. Yes, sir.

Q. What did he say?

A. He and I decided that going around and sticking them up wasn't no place for us.

Q. And so what was your—what was his thought about how that would be done?

A. We figures we could find somebody to do it for us.

Q. All right, sir. Now what was the first bank that your attention got focused on as a possibility for robbery?

A. Bordeaux.

Q. Bordeaux branch of the Commerce Union Bank?

A. Yes, sir.

Q. When did Ethridge start discussing that as a serious proposition?

A. Well, sometime in April there.

Q. Sometime in April?

A. Yes.

Q. What did he say about it?

A. Said we would get somebody to rob it, it would be all right then.

Q. So the idea was to get somebody else to rob it, [1966] is that right?

A. Yes, sir.

Q. Now, Mr. Leeman, did the opportunity arise to get somebody else to rob the bank?

A. Yes, it did.

. . . . . .

Q. The opportunity did arise?

A. Yes, it did.

. . . . . .

Q. Were some one or more people procured to go into the bank?

A. Leroy Bracey brought Larry Ferguson over there.

Q. When was that? Leroy Bracey brought Larry Ferguson over where, to Ethridge's house?

A. Yes, sir.

Q. And when was that?

A. I don't recall the date.

Q. Well——

[1967] A. Approximately two weeks before the Bordeaux bank was robbed.

Q. And that bank was robbed on the 24th of April, is that right?

A. Yes, sir.

Q. Well, when Leroy Bracey brought Ferguson over there, what happened?

A. Well, it wasn't long until Bracey got picked up there by the FBI.

Q. Yes, sir.

A. So Ferguson, he was out on his own there, so Gary and I talked about the propositioning him about robbing the bank, and we did, and he accepted.

Q. He accepted?

A. Yes.

Q. And about how long before the bank was robbed was that?

A. Three or four days.

Q. Had you been talking to him about it before three or four days before the bank was robbed?

A. Not much.

Q. I see. He accepted that proposition three or [1968] four days before the bank was robbed?

A. Right.

Q. Now was the idea for him to go in by himself or somebody else with him?

A. He needed somebody else.

Q. Did he get somebody else?

A. Yes, sir.

Q. How did that come about?

A. We just asked him could be get somebody else, and he said he could.

Q. All right. And who did he get?

A. Bostic.

Q. That's James Herman Bostic?

A. Yes.

Q. Did he tell you how come him to get Bostic or why Bostic accepted the job?

A. Bostic broke out of the penitentiary and he needed some money to get out of town on.

Mr. BINKLEY. If Your Honor please, that's hearsay, and I object to this testimony. I objected to it before, and I believe that I'm entitled to a mistrial because of this testimony.

The COURT. That——

Mr. BINKLEY. And I submit that Mr. Merritt knew the answer that he was going to solicit when he asked [1969] the question, and that I'm entitled to a mistrial.

Mr. MERRITT. It's part of the conspiracy.

The COURT. He's relating something that—what person told him?

By Mr. MERRITT:

Q. Who told you that?

A. Pardon?

Q. Who told you that about Bostic breaking out of the penitentiary, who told you that?

A. He or Ferguson one, I don't know.

Mr. BINKLEY. I don't know. He can't even identify who made the statement, and I submit Mr. Merritt has been talking to this witness, talked to him on the break, and he had to know what this witness could testify to.

Mr. MERRITT. May it please the Court, it's part of the conspiracy.

The COURT. I don't see, if there's a conspiracy established, then the declarations or statements of members of the conspiracy are admissible in evidence.

Mr. BINKLEY. If Your Honor please, I think the man ought to be able to identify who was making the statements. He just plucked this out of the air.

The COURT. He said one or the other. Overrule the objection.

[1970] Mr. WILSON. Note an objection by the three defendants I represent.

By Mr. MERRITT:

Q. All right, he said Bostic had just broken out of the penitentiary and he needed some money to get out of town?

A. Somebody said that; I can't recall who it was.

Q. Well, did Bostic come out there before the bank was robbed?

A. Yes, sir.

Q. When was it that he came out there?
A. The 21st.
Q. The 21st of September?
A. April.
Q. Who did he come out there with?
A. Ferguson.
Q. James Larry Ferguson?
A. Yes, sir.
Q. Ferguson brought him out where?
A. Out to Gary's.
Q. All right. Now on the 21st of April, what day of the week would that have been?
A. Friday.
Q. On that day, was there a meeting about this bank robbery?
[1971] A. Yes, sir.
Q. Was that meeting at Ethridge's house?
A. Yes, sir.
Q. Who was present?
A. Gary, myself, Bostic and Ferguson.
Q. What time did that meeting get started?
A. In the neighborhood of noon.
Q. Around noon time?
A. Yes.
Q. What time did it break up?
A. Three or four o'clock.
Q. What was the purpose of the meeting?
A. Make plans to rob the Bordeaux bank.

* * * * * * *

A. When was the bank—and did you make plans to rob the bank at that time, Friday, from noon to three o'clock, the 21st?
A. Yes, sir.
Q. And pursuant to those plans, was the bank robbed?
A. Sir?
Q. In carrying out those plans, was the bank robbed?
A. Friday?
[1972] Q. No, later.
A. Yes, sir, it was robbed.
Q. What day?
A. Monday.

Q. Was that a part of the plan for the bank to be robbed on Monday?

A. Yes, sir.

Q. Why was the date of Monday, the next Monday, chosen as the date for the robbery?

A. Thought there would be more money out there on Monday.

Q. On a Monday?

A. Yes, sir.

Q. All right. Now I want to get into—with you, Mr. Leeman, about the plans for robbing that bank that were discussed there at Ethridge's house that day, Friday.

First, let me ask you about the cars. Let me direct your attention to the cars to be used and ask you what cars were to be used in the robbery?

A. It was a white Cadillac and a GTO Pontiac.

Q. White Cadillac and GTO Pontiac to be used?

A. Yes, sir.

Q. Where did these cars come from?

A. Somebody stole them.

Mr. WILSON. Object to that if he didn't see it.

[1973] The COURT. Sustained.

By Mr. MERRITT:

Q. Well, did you ever have any conversation with Ethridge about where the cars came from?

A. Well, I knew they had been stolen.

Q. All right, sir. Whose cars were they, do you know?

A. You mean who did they belong to?

Q. Well, they belonged to somebody, they had been stolen from, isn't that right?

A. Yes.

Q. Who had the use of them after they had been stolen?

A. I don't know who stole them.

Q. In other words, who—sir?

A. I don't know who stole them.

* * * * * *

Q. Let me ask you this, right there before the robbery, who had the cars?

[1974] A. Gary had the keys to them.

Q. Gary had the keys to them?

A. Yes, sir.

Q. Where were the cars which had been stolen, where were they kept?

A. One of them was at Parkview Hospital.

Q. Which one was that, do you know?

A. The white Cadillac.

Q. The white Cadillac was at the Parkview, all right.

A. The GTO Pontiac was at the old County Hospital in Bordeaux.

Q. Now Parkview Hospital is right out here next to Centennial Park where the Parthenon is, isn't it?

A. Yes, sir.

Q. It's on a street that runs right beside that in between West End Avenue and Charlotte Pike, isn't that correct?

A. Yes, sir.

Q. The old County Hospital that you are talking about is out in Bordeaux?

A. Yes, sir.

* * * * *

[1975] * * * * *

Q. How far is the old County Hospital from that bank, that Bordeaux branch of the Commerce Union Bank?

A. Mile and a half, I guess.

Q. A mile and a half down the road off of Clarksville Highway?

A. Yeah.

Q. And it was down at the old County Hospital that the GTO Pontiac was stolen?

A. Right.

Q. Did you see those cars—did you see the white Cadillac at Parkview?

A. Yes, sir.

Q. Who was with you when you saw it?

A. Gary and I rode over there to see if it was there.

Q. What day was that, do you know?

A. Friday or Saturday one, I think.

Q. All right. Now about these cars, was it a part of the plan to get Ferguson and Bostic over to the cars on Monday morning before the bank was robbed?

[1976] A. Yes, sir.

Q. Who was supposed to take them over there?

A. Gary and I took Bostic and Ferguson to the GTO.

Q. All right, sir. Over to the GTO at the County Hospital?

A. Yeah.

Q. Now on Friday when you were planning the bank robbery, what was the plan for the bank robbery, to go up to the bank and then how were they supposed to get out of there?

A. Get out of there?

Q. What route were they supposed to follow, what were they supposed to do after the bank was robbed?

A. They was going—I don't know what the names of the streets are, I know how they were going and switch cars.

Q. Where were they supposed to go first, Bostic and Ferguson, after they robbed the bank?

A. Over to the TB Hospital.

Q. Over to the TB Hospital?

A. Yeah.

Q. In order to get to the TB Hospital from that bank, you go out Clarksville Highway a little piece, wouldn't you, a little bit?

A. Several ways to get out there.

Q. Do you know how they got out there?

A. Yes, sir.

[1977] Q. What was the plan on that, how were they supposed to get there?

A. They made two or three cuts there, like I say, I don't know the name of those streets, and they wound up on Trinity Lane and went out Trinity Lane.

Q. I see. The TB Hospital is how far from the Bordeaux branch of the Commerce Union?

A. A couple of miles, I guess.

Q. And whereas the county hospital would be on your left as you go out Clarksville Highway, as you cut off Clarksville Highway, the TB Hospital would be on your right after you cut off Clarksville Highway, is that right?

A. Right.

Q. Now what were they supposed to do? Why were they supposed to go to the TB Hospital?

A. To shift automobiles.

Q. To switch automobiles from the Pontiac automobile to the Cadillac automobile?

A. That's right.

Q. And the Cadillac automobile was stored at the TB Hospital, I believe it was left at the TB Hospital for the purposes of switching cars?

A. It had been moved from Parkview to the TB Hospital.

Q. Do you know who moved the car?

[1978] A. No.

Q. But it had been moved?

A. Yes, sir.

Q. All right, and did Sammy Ray Cole have any role in this bank robbery, was the plan——

A. He was waiting in the Cadillac up at the TB Hospital.

Q. He was waiting in the Cadillac after the robbery?

A. Yes.

Q. What was he supposed to do?

A. He and Bostic were going to get out down there and jump in the woods.

Q. All right, he and Bostic—in other words, they were supposed to come over to the TB Hospital, switch the Pontiac automobile for the Cadillac automobile?

A. Right.

Mr. BINKLEY. If Your Honor please, I object to this leading.

* * * * *

The COURT. Sustained.

* * * * *

Q. Now who was supposed to be in the Cadillac [1979] automobile after the switch was made? Who was supposed to be inside that car?

A. Sammy, Bostic and Ferguson.

Q. Sammy?

A. Sammy Cole.

Q. Sammy, Bostic and Ferguson?

A. Yeah.

Q. And who was supposed to be driving it?

A. Sammy drove it, I think. I don't know, who drove it, I wasn't up there.

Q. All right, and what were they supposed to do next after they got in that car and started driving, what were they supposed to do next?

A. Coming out of the TB Hospital and took a left, and first street back, they went right, and Cole and Bostic got out and went in the woods and Ferguson went on.

Q. Cole and Bostic got out and went in the woods?

A. Yeah.

Q. So then about a mile or half a mile, there's some woods up there on the top of the hill?

A. Yes.

Q. Is that the woods they were supposed to get out in?

A. About a half a mile, yeah.

Q. All right. Then where was Ferguson supposed to [1980] go? Was he supposed to keep on going?

A. He went on over to Moormans Arm Road, and on the left there there's a Negro subdivision, and he parked the Cadillac over there. On the other side of the road was a beer joint, and he went—got out of the Cadillac and went over to the beer joint.

Mr. WILSON. Is he testifying that he knows that this happened?

Mr. MERRITT. No, this is the plan.

The COURT. He's asking about the plan.

Mr. WILSON. The way I understand it, he's telling the jury what they actually did.

The COURT. Well, that's the way he's wording it, but he was asked what the plan was, and then he's answering it in the form of what actually happened, but I take it to mean that he's stating what the plans were as to how this should be carried out, is that correct?

Mr. MERRITT. Yes, sir.

Mr. BINKLEY. I think so we shouldn't have any confusion, I think he ought to relate——

The COURT. You can cross examine him; that's the way I understand his testimony.

By Mr. MERRITT:

Q. Now was there any plan made about who was to pick up Ferguson? I believe you just got through saying that [1981] Ferguson was to drop the car in a subdivision and go over to a beer tavern, is that all right out there in the Bordeaux area?

A. Yes, sir.

Q. Was any plan about who was supposed to go over and get Ferguson?

A. We planned for Georgia to go get him.

Q. And what about Bostic and Cole, who were supposed to be up in the woods, what was the plan on that?

A. She was going to pick them up at dark.

Q. All right, sir. Now in the planning of it, were Bostic and Ferguson, when they went in the bank, what were they supposed to be wearing, if anything?

A. Masks, stocking masks.

Q. Now do you know where—whether both of them had on stocking masks when they went in, as a matter of fact?

A. I didn't see them go in.

Q. All right, sir. After the bank robbery, did you hear from either Ferguson or Bostic whether both of them had on masks or not?

A. Bostic said he didn't wear one.

Q. What did he have on?

A. A straw hat and a pair of sunglasses.

Q. What about Ferguson?

A. He said he wore his mask.

[1982] Q. What about Bostic's hair at that time? Was it the same color it is now?

A. It was bleached blonde.

Q. It was bleached blonde at that time?

A. Yes.

Q. All right, sir. Now the weapons used in the bank robbery, what was the plan about that, what were the weapons to be used?

A. A sawed-off shotgun and a pistol.

Q. A sawed-off shotgun and a pistol. All right. Who was supposed to have the sawed-off shotgun?

A. Gary and I gave Ferguson the money and twenty-five dollars, and he knew where he could get one.

Q. And he went and got a sawed-off shotgun?

A. Right.

Q. Who was supposed to be carrying that sawed-off shotgun when they got in the bank?

A. Ferguson.

Q. When they got in the bank, what was the plan about what was supposed to happen? Where was Ferguson supposed to stand, what was he supposed to do?

A. He was supposed to make folks lay down on the floor there.

Q. And then he was supposed to have the shotgun in his hand, What was Bostic supposed to do?

[1983] A. Get the money.

Q. Go around behind the counter and get the money?

A. Right.

Q. All right, sir. Now what was supposed to happen when they got in the bank about tellers and the customers? Was there anything—part of the plan about that?

A. Yeah, they were going to tell them there was a holdup, get on the floor, lay down and face the wall.

Q. All right, sir.

Q. Now as part of the plan, was there any agreement on the split of the money?

A. Yeah, we was going to split the money four ways, at first, and then we decided to split it five ways.

* * * * *

Q. According to the original plan, who was the money supposed to be split among?

A. Bostic, Ferguson, Gary and myself.

Q. And then when it got to be five ways, who was that supposed to be?

A. Cole.

Q. Sammy?

A. Samnny Cole.

Q. Now after that meeting in which the details of [1984] the robbery was planned, where did you go?

A. I don't know where I went.

* * * * *

Q. After the meeting there on Friday the 21st, where the bank robbery was planned, state if you know where Ferguson and Bostic went to.

A. They were taken to Manchester, Tennessee. I believe it was Manchester.

Q. Taken to Manchester and what were they supposed [1985] to do up there?

A. Check in the motel and spend the weekend.

Q. And what was the purpose of that?

A. Didn't want to get—want to take a chance on Bostic getting picked up before Monday.

Q. Since he was a fugitive, didn't want Bostic to get picked up over the weekend in Nashville?

A. That's right.

Q. And that was because—why was he going to get picked up?

A. He escaped from the penitentiary.

Q. All right, and then when was the next time you saw Ferguson and Bostic after you all split up out there on Friday?

A. Gary and I and Sammy Cole went up there Monday morning and picked him up.

Q. At the motel?

A. Right.

Q. And where did you bring them back to?

A. We came to Gary's.

Q. I see. And then what happened?

A. Gary and I and Bostic and Ferguson went down in North Nashville and bought two shopping bags and took them over there and let them out at the GTO Pontiac over at the County Hospital.

[1986] Q. The four of you went over to North Nashville and bought two shopping bags. Do you recall anything the shopping bags had on them?

A. Merry Christmas.

Q. And then you took them over to the County Hospital, is that right?

A. That's right.

Q. What happened when you took them over there?

A. They got out.

Q. All right. Now Sammy, what happened about him?

A. Georgia was to take Sammy up to the TB Hospital and let him out.

Q. So he would be there when Bostic and Ferguson got back, is that right?

A. That's right.

* * * * * * *

[1987]

* * * * * * *

Q. I see. What happened about Sammy, now we want to know about that.

A. Georgia was to take Sammy up at the TB Hospital and let him out at the Cadillac.

Q. All right. And then after you and Ethridge took Bostic and Ferguson over to the County Hospital, what did you all do then?

A. Beg your pardon?

Q. What did you all do then after you took them over to the County Hospital for them to pick up the car, what did [1988] you all do then?

A. Gary and I went back to his house.

Q. All right, and then what did you do?

A. We left. I went down in Bordeaux to the market down there and stayed a while.

Q. You went to the grocery store down in Bordeaux?

A. Yes.

Q. How close is that to the bank?

A. Four or five blocks.

Q. Gary, what did he do?

A. He left too. I don't know where he went.

Q. He went somewhere?

A. Yes.

Q. All right. Now what did you do after you stayed down there at the grocery store for a while?

A. Went back over to Gary's.

Q. Did you know when you went back to Gary's whether or not the bank had been robbed?

A. I knew it had been robbed.

Q. How did you know it?

A. There was a lot of police running around out there.

Q. A lot of police cars came up?

A. Yes, sir.

Q. So then you went back over to Ethridge's house?

[1989] A. Yes, sir.

Q. So then—who was there when you got back, do you know?

A. I don't think anyone was.

Q. Did somebody come in after you got there?

A. Gary.

Q. About how long?

A. Five or ten minutes, I suppose.

Q. Did anybody else come in?

A. Georgia with Ferguson.

Q. About how long was that?

A. Not long afterwards, five or ten more.

Q. What did Ferguson, who I believe was called Kingfish, what did Ferguson say had happened, if anything, when they came in?

A. Said they had robbed a bank.

Q. What did he say about what happened inside the bank and what they got and so on?

A. They got a sack full of money.

* * * * * *

Q. What was his manner? Did he appear excited, nervous or what?

A. He was excited.

Q. All right. Did he say or indicate anything about [1990] whether or not the robbery had gone according to the plan?

A. Said he thought it had.

Q. All right, and then what happened after that, after Ethridge got there about five minutes later, and then Georgia comes in with Ferguson, then what happened?

A. It wasn't long Gary, and Ferguson went to the picture show.

Q. They left and went to the movie, is that right?

A. That's what they said they was going to do.

Q. Where did you go?

A. I went home.

Q. When is the next time after that you saw Gary?

A. I guess it was that night.

Q. Now Bostic and Cole at this time, when you went home, and Gary and Ferguson went to the movie, where were they supposed to be?

A. Hid in the woods.

Q. And state again for the jury who was supposed to pick them up and what time.

A. Georgia was going to pick them up about dark.

Q. All right. And you say you saw Gary the next time that night, where was that?

A. Perry Patten's house.

Q. And what was the purpose of going over there?

A. Split up the money.

[1991] Q. Who was there?

Q. Me, Gary, Cole, and Bostic, Georgia took Patten and his wife off on the pike up there for something.

Q. Georgia took Perry Patten's wife out of the house so she wouldn't be there?

A. Right.

Q. So she wouldn't know about it or something like that?

A. Yes, sir.

Q. Well, how did—were you there at Perry Patten's house when Bostic and Cole got there?

A. I don't remember whether I was or not.

Q. You don't know whether you beat them or they beat you?

A. No.

Q. All right. Now approximately how much money had they gotten out of that bank?

A. Twenty-nine thousand, something like that.

Q. About twenty-nine thousand?

A. Yes.

Q. And how was the money split?

A. Five ways.

Q. All right, so about how much did you get?

A. Between five and six thousand.

Q. All right. Then after the money was split, [1992] what do you do?

A. I took mine off and hid it.

Q. And then after you did that, what did you do?

A. Went back over to Perry's.

Q. And that was still on the night of the bank robbery, April 24th?

A. That's right.

Q. That's when we're talking about. All right, sir, you went back over to Perry's and then what did you do?

A. We eat supper, and Gary and I and Perry took Bostic to Louisville, Kentucky.

Q. That night?

A. That night.

Q. What was the purpose of that?

A. Get him out of town.

Q. And so you and Gary and Perry Patten took Bostic to Louisville?

A. Yes, sir.

Q. Did you come back that night?

A. Yes, sir. No, we didn't, we stayed and spent the night somewhere up in there between here and Louisville.

Q. And then came on back the next morning?

A. Right.

Q. All right, Mr. Leeman, I want to ask you some questions about why certain things were done, some of them may [1993] seem a little simple minded, but I want you to tell the jury about it anyway.

Why was the decision made for them to wear masks?

A. To conceal their identity.

Q. All right, and what was the reason for using more than one car, two cars were used in the job, one over at the County Hospital, robbed the bank in that, and then switched cars; what was the reason for that?

A. Harder to follow and trace that way, harder for the police to catch you that way.

Q. You mean so—what you mean by that is that the car that is seen leaving the bank wouldn't be the same car that the bank robbers end up in, is that right?

A. Yes, sir.

Q. Now what was the reason why Cole went up in the woods with Bostic?

A. We didn't know Bostic too well, and afraid he might run off with the money.

Q. So Cole went with him up in the woods?

A. Sort of guarding him.

Q. What was the reason for Ferguson using a shotgun inside the bank rather than some other kind of weapon?

A. It was our opinion that a shotgun commands more respect than a pistol.

Q. What was the reason for making the tellers and [1994] customers lie down on the floor?

A. So they wouldn't get any description of you.

Q. What was the reason for Bostic hiding up in the woods?

A. So if they got picked up in a roadblock, they wouldn't get the money caught.

Q. And finally, why was Georgia the one who was supposed to go after Ferguson and then go after Bostic and Cole?

A. We didn't figure the police would be looking for a man and a woman.

Q. That is the police wouldn't suspect a woman of being in on the deal?

A. Right.

Q. Now after that bank robbery, was there any car trading?

A. Gary got him a new car.

Q. What kind of a car did he get?

A. Bonneville Pontiac.

Q. All right. Now, Mr. Leeman, after the Bordeaux job, in which your relationship was one in helping to plan the job, as I understand, after that, did your relationship with Ethridge and the group out there stay the same or did it change any?

A. It cooled down some.

[1995] Q. Were you active in anything further about banks?

A. No, sir.

Q. Why was that?

A. Well, I wasn't going to go in and rob one, and we had more planners than we did robbers.

Q. Did Ethridge figure you weren't much use to him if you weren't going to go in a bank?

A. I suppose so.

Q. All right. Now did you continue, however, to go out there to Ethridge's house just about as frequently as you had been going two or three times a week?

A. Yes, sir.

Q. How often did you see these—well, I believe you said you met Beard when?

A. A few days after the Bordeaux bank was robbed.

Q. How frequently did he come out there after you met him at Ethridge's house?

A. Not very frequently until Bostic got picked up.

Q. Which would have been when, do you recall when that was?

A. No, sir, I don't.

Q. Then after Bostic got picked up, how frequently did he come out there?

A. He was out there pretty regularly, two or three times a week.

[1996] Q. What about Sammy Cole, how often was he there?

A. Sammy, he didn't come around too much after that.

Q. Didn't come around too much?

A. No.

Q. Had he been there a pretty good deal before that time?

A. Yes, sir.

Q. What about Dickie Self?

A. Dickie, he wasn't hanging around over there at the time of the Bordeaux bank robbery.

Q. What about after that?

A. A month or so later, he started coming over pretty regular.

Q. Coming over pretty often?

A. Yes.

Q. Now, Mr. Leeman, do you know anything about what happened after this bank robbery with reference to a trip to Florida?

A. Trip to Florida?

Q. Yes.

A. Whose trip?

Q. Well, I mean did somebody go down there to Florida after this bank robbery?

A. I heard that a few of them went; I don't know [1997] that they did.

Mr. WILSON. Object, if he doesn't know.

The COURT. Sustained.

By Mr. MERRITT:

Q. Well, who did you hear from that a few of them went?

Mr. WILSON. That would be just as objectionable, if Your Honor please, unless he knows.

The COURT. He could state whether or not he heard it from any one of the defendants.

By Mr. MERRITT:

Q. Did you hear it from any one of these folks that they had been down in Florida?

A. Yes, sir.

Q. All right. With reference to that trip down to Florida, what did Ethridge do, if you know, if anything?

A. What did Ethridge do?

Q. Well, to be a little more specific, anything in connection with Ferguson?

A. He got a call from Ferguson while they was down there——

Mr. WILSON. Unless he knows——

By Mr. MERRITT:

Q. He got a call?

A. Yeah, I was over there at his house when Ferguson [1998] called. He said it was Ferguson.

Q. All right.

A. I wasn't on the other phone, if that's what you mean.

Q. Ethridge got a call from Ferguson?

A. Wanting him to meet him in Chattanooga with some money.

Q. And what did Ethridge do?

A. Asked me what I thought about sending it Western Union.

Q. All right, and what did you tell him?

A. I told him I thought he was crazy.

Q. After that what happened?

A. I assume he met him and give him some money.

Q. All right. Now who was—who went down to Florida—you say you heard from the defendants that some went down to Florida, who went down there?

A. I don't know who all went.

Q. Do you know some of them?

A. Beard and Bostic was telling me they went.

Q. Beard and Bostic told you they went?

A. Yeah.

Q. What about Ferguson?

A. I think he said he went.

Q. All right. After they got back from Florida [1999]—let me ask you this, on this trip to Florida, do you recall how long after the robbery of the Bordeaux bank that was?

A. No, sir, I don't.

Q. I mean was it a week, two weeks, two months, three months—you know.

A. Well, a week or ten days.

Q. A week or ten days?

A. Yes, sir.

Q. And when they got back, when was—well, when was the next time you saw Bostic and Ferguson?

A. I don't know when the next time I seen them.

Q. Well, did they ever come by your house, Ferguson or Bostic either one of them come by your house after they got back from Florida?

A. They dropped by over there and got some money.

Q. How did that come about?

A. Just come over there and got it.

Q. What did they say to you when they got that money?

A. That they was broke.

Q. And did you give them some money?

A. Yes, I did.

Q. Where did you get the money you gave them?

A. Where?

Q. Yes, what money was it you gave them?

[2000] A. The money out of the bank robbery.

Q. How much did you give them?

A. I give them some money two or three different times, I don't know how much.

* * * * *

Q. After you got through giving them money, how much money did you have left out of the bank robbery?

A. When I got through, Bostic, Beard, and Ferguson, I netted about a thousand dollars.

Q. All right, sir. Now directing your attention to the Orlinda Bank burglary, and ask you to tell the jury if you were active in planning that?

A. I wasn't.

Q. Did you have anything to do with it?

A. I didn't.

Q. After the Bordeaux job, I believe you said you were still going over to Ethridge's house pretty frequently.

A. Yes, sir.

Q. Did you hear any talk about the Orlinda burglary by Ethridge?

[2001] A. I heard somebody over there, I don't know whether it was Gary or exactly who it was.

Q. Well, was it any of the defendants?

A. It was some of them. Gary, Bostic or Beard, some of them.

Q. Gary, Bostic or Beard?

Mr. QUILLEN. I'd like to object if he can't be any more specific.

Mr. BINKLEY. I'd like to object, too, if Your Honor please, this guessing business——

The COURT. We would have to be able to identify them.

* * * * *

The COURT. Now what is the exact question you wanted to ask?

Mr. MERRITT. The exact question, he said he heard at Ethridge's house discussion of the Orlinda Bank job, and I asked him who he heard it from, and he said it was Ethridge or——

The COURT. I'll let him answer that if he identifies the persons present.

[2002] Mr. MERRITT. All right.

By Mr. MERRITT:

Q. You said you heard it from who? Who did you say you heard it from?

The COURT. No, who were present at the time.

By Mr. MERRITT:

Q. Who was present when you say you heard it?

A. I can't recall that.

Q. Well, state who—can you narrow it down to who was—what certain people were present?

A. I don't know who was present.

Q. Well, state—you stated——

Mr. BINKLEY. If Your Honor please, the witness has already answered it. He can't recall, and he says he doesn't know who was present.

The COURT. He stated he couldn't recall, but I don't know what the next question was.

Mr. BINKLEY. I think he's arguing with his own witness now.

The COURT. Go ahead for the present.

By Mr. MERRITT:

Q. Can you state that it was one of several people who told you that?

A. Yes, I can.

Q. Who were those people?

[2003] A. Gary, Bostic or Beard.

Mr. QUILLEN. That's either-or.

The COURT. How's that?

Mr. QUILLEN. He said either-or.

The COURT. Was the statement made in the presence of all three of those persons? Were they all present? If he doesn't know, I don't believe it would be competent.

Mr. QUILLEN. I move it be stricken, what was said.

The COURT. I sustain the motion.

By Mr. MERRITT:

Q. Mr. Leeman, did you hear discussion about the Orlinda Bank at Ethridge's house?

A. There or at the golf course one.

Q. Well, either there or at the golf course one. If it was at the golf course who would you have heard it from, if you know?

Mr. QUILLEN. Objection, calls for a conclusion.

The COURT. He said if you know; who did you hear it from if you know. That's competent.

The WITNESS. Be from Gary.

* * * * * *

[2004] * * * * *

Q. Is that Gary Ethridge you are talking about?

A. Gary Ethridge, yes.

By Mr. MERRITT:

Q. What did you hear about the Orlinda job?

Mr. QUILLEN. Objection unless he's going——

The COURT. Overruled.

The WITNESS. Heard somebody run out of their shoes down there. They left some cutting torches in the bank down there.

By Mr. MERRITT:

Q. Did you hear who was down there to pull that job?

A. Yeah, there was several of them down there, I understand.

Q. Did you hear anything about where they stayed?

A. Bowling Green.

Mr. QUILLEN. Is Your Honor going to permit this [2005] over our objection without being attributed to any source?

The COURT. I haven't heard any objection to this.

Mr. QUILLEN. I thought I had made one.

The COURT. No, this is another question.

Mr. QUILLEN. I do object now.

The COURT. Upon what ground?

Mr. QUILLEN. He's not attributing it to any source.

The COURT. I'm understanding him to say he's attributing it to Gary Ethridge, is that your testimony?

The WITNESS. He asked me if it was at the golf course who would I have got the information from, and I told him Gary.

The COURT. All right.

Mr. WILSON. We haven't determined whether it was at the golf course yet.

The COURT. If it was at the house, who was it from?

The WITNESS. Could have been any one of them.

The COURT. Any one of who?

The WITNESS. Gary or Bostic or Beard, them.

By Mr. MERRITT:

Q. Let me ask you this, Mr. Leeman, how much [2006] talk, if any, after the Bordeaux bank robbery was there at the Ethridge's house about robbing and burglarizing banks?

A. I didn't hear much about it.

Q. Did you hear some about it?

A. I don't know whether I did or not.

* * * * *

[2007] * * * * *

(Whereupon, at 1:50 o'clock p.m., Court was reconvened pursuant to the adjournment, and the following further proceedings were had in the absence of the jury:)

The COURT. Do you have a matter to take up?

Mr. BINKLEY. Yes, sir. May it please Your Honor, I would like to move at this time that certain portions of the testimony which has been given by this witness be stricken and the jury so advised, specifically the alleged statement concerning anything that happened at Orlinda Bank which, as I recall, the witness made some statement about leaving some shoes or something at Orlinda Bank.

The COURT. Let's be clear what he said, I mean what you are moving to strike. Specifically what is it?

Mr. BINKLEY. Well, I'm moving that we strike anything pertaining to this Orlinda Bank.

The COURT. Orlinda?

Mr. BINKLEY. Orlinda Bank, and I'm relying on the case of Krulewitch v. United States and Wong Sung v. United States, where the Court holds in the Krulewitch case, states, concerning these hearsay statements—this is on [2008] page 43—it says, the prerequisite to admissibility, that hearsay statements by some conspirators be admissible against others must be made in furtherance of the conspiracy charged has been scrupulously observed by the Federal Courts, and in this case, the Court goes on to say, the government now asks us to expand this narrow exception to the hearsay rule and hold admissible a

declaration not made in furtherance of the alleged criminal conspiracy charged, but made in furtherance of an alleged, implied, but uncharged, conspiracy aimed at preventing detection and punishment.

The COURT. Let me see the indictment.

Mr. BINKLEY. Sir?

The COURT. I wanted to see the indictment.

Well, isn't this alleged as an overt act, the Bank at Orlinda, robbery, isn't that alleged as an overt act?

Mr. BINKLEY. It is alleged as an overt act, but the fact that a statement was made on a golf course could not be a statement made in furtherance of this conspiracy.

The COURT. You mean because it's made—all right, go ahead.

Mr. BINKLEY. If in fact this statement was made after the robbery or attempted robbery.

[2009] I would like to call the Court's attention to——

The COURT. A statement by a conspirator that it did occur, wouldn't that be binding on the other conspirators?

Mr. BINKLEY. No, sir.

The COURT. If there is a conspiracy?

Mr. BINKLEY. No, sir.

The COURT. Admissions made by one member of the conspiracy during its progress is not binding on the others?

Mr. BINKLEY. No, sir.

The COURT. Where did you——

Mr. BINKLEY. The case of Wong Sung against the United States, and I'm quoting here:

* * * * * *

[2010–2011] * * * * *

[2012] * * * * *

The COURT. I don't see under what theory that would be inadmissible if it was made during the progress of the conspiracy, one conspirator speaking to another.

Mr. BINKLEY. If Your Honor please, I'm just stating what the Court has said.

The COURT. I'll have to look at those authorities. I can't take a broad statement like that.

* * * *

[2013] * * *

The COURT. Well, I'll look at these, and in the meanwhile, let's go ahead. If this is to be stricken, I can do it later as well as now.

* * * * * *

[2014–2016] * * * * * *

[2017] (Whereupon, the jury returned to the courtroom, and the following further proceedings were had in the presence of the jury:)

* * * * * *

DIRECT EXAMINATION (Continued)

By Mr. MERRITT:

Q. Mr. Leeman, I believe you testified before lunch that after the Bordeaux bank robbery, you still continued to go to Ethridge's house frequently, is that correct?

A. That's right.

Q. But that you were not a direct participant in any further bank robberies or bank burglaries, was that your testimony?

A. Yes, sir.

Q. I'll ask you how frequently—well, when did you stop going out there?

A. When did I stop?

Q. Stop going frequently?

A. When I got arrested.

Q. In this case?

A. Right.

[2018] Q. And during the period of time from the Bordeaux job, April 24, 1967, on up to the date of the arrest in this case, which was around September the 26th, you continued to go out to Ethridge's house frequently, is that correct?

A. That's right.

Q. When you went out there frequently, did you see Eugene Beard?

A. He was out there pretty regular.

Q. What about Dickie Self?

A. Same way, he was over there every day just about.

Q. Over there every day?

A. Yeah.

Q. While you were going out there prior to the arrest after the Bordeaux job, did you hear any discussion of the Third National Bank, Third and Lafayette?

A. Some.

Mr. BATEMAN. Object to that in its present form. There's been no foundation, no showing who was present.

Mr. MERRITT. I believe he heard some talk, may it please the Court, about that, the other bank robbery having been planned at that same house——

Mr. BINKLEY. If Your Honor please, I object to Mr. Merritt testifying as to what the witness——

The COURT. I think you should lay some foundation for asking him this question about the different [2019] bank robberies.

Mr. MERRITT. Well, may it please the Court, about the only question——

The COURT. You say any discussion, I don't know, by whom, under what circumstances? You would have to show who was present, who was doing the talking, and so on.

By Mr. MERRITT:

Q. Mr. Leeman, do you recall when the subject came up who was present or who may have been present at that time?

A. No, sir, I don't.

Q. You don't recall who was present?

A. No, sir.

Q. Can you narrow that down to certain people who would have been present without being absolutely certain as to who everybody was?

A. Well, sometimes there was a big crowd over there. I can't remember who all was there at what time.

Q. All right. Was Gary Ethridge present?

A. When I heard about it, I don't know whether he was or not.

Mr. MERRITT. May it please the Court, now my next question is going to be over there at that house what he heard about it. He's testified that he cannot recall who was present and who said what, but that he [2020] heard some talk about it over there, and it's on that basis——

Mr. BATEMAN. I certainly object to what he heard.

Mr. BINKLEY. If Your Honor please, when there's no showing when he heard what he heard or who was present when he heard what he says he heard, I don't see that the proper foun-

dation has been laid for any evidence to come in on what he might have heard at some undetermined time.

Mr. MERRITT. Let me ask him this question.

By Mr. MERRITT:

Q. About how long before the Third National Bank robbery did you hear some talk about it?

A. I can't say any specific time.

Q. Well, was it a week, two weeks, three weeks or a month or six months?

Mr. QUILLEN. We object to the leading, he's asked him now——

The COURT. He's given him several alternatives; let him state what——

By Mr. MERRITT:

Q. Would it have been more than a month or two months beforehand?

A. I don't reckon so. I don't know when it was.

[2021] Mr. MERRITT. All right. Now my next question is what he heard about it.

Mr. BATEMAN. I'm going to object.

Mr. WILSON. I object too on behalf of all three of my clients.

The COURT. Well, let's see. You are asking him specifically about what date?

Mr. MERRITT. Well, he said he heard something about it a month——

The COURT. What robbery I mean?

Mr. MERRITT. Third National.

The COURT. What date was that?

Mr. MERRITT. That was on August the 3rd, 1967.

The COURT. Has he fixed any time for it at all, anything that he may have heard? I don't know whether it was before August the 3rd or after August the 3rd.

By Mr. MERRITT:

Q. Was the talk you heard about it before August the 3rd, before the bank robbery?

A. Yeah.

The COURT. And has he fixed the place?

Mr. MERRITT. Yes, sir, it was at Ethridge's house.

The WITNESS. I don't know whether it was there or over to the golf course.

[2022] Mr. MERRITT. Well, may it please the Court, I withdraw that.

The COURT. All right.

By Mr. MERRITT:

Q. Was there some falling out between Ferguson and some of the rest of them?

A. As far as I know, there was.

Q. There was a falling out. Did you ever have any discussions with Ethridge about Ferguson and what he was doing?

A. We got a report that he was talking to the FBI.

Q. Did you discuss that with——

Mr. QUILLEN. Object, on the report.

The COURT. Overruled.

By Mr. MERRITT:

Q. Did you discuss that report that you got with Ethridge?

A. Yeah, we talked about it.

Q. And what was the substance of the conversation, your discussion about it?

[2023] A. Well, we just knew—heard that he had been talking to the FBI.

Q. Did you have any discussion with Ethridge about anything pertaining to Ferguson getting any money from him or something?

A. Yeah, he was getting a little money from Gary about a month or so before he was killed, I understand, what Gary said.

Q. You understand that from Gary?

A. Yeah.

Q. What was Gary's attitude about that?

A. He wasn't too happy with it.

Q. Did Gary tell you how he was trying to get money from him?

A. No, he was just asking him for it.

Q. Repeat that again?

A. He was asking him for it.

Q. Was Gary giving it to him?

A. My understanding he was.

[2024] * * * * * *

Q. All right, sir. Now let me ask you one or two questions about the Bordeaux job that I overlooked. Do you know everything—what do you know about Ferguson, the color socks that he had on when he went in that bank?

A. He had gold ones on.

Q. He had gold socks on when he went in the bank?

A. Yeah.

Q. What does Ferguson look like, what kind of a build does he have?

A. Slender build, about five ten.

Q. All right. One or two other things. Do you recall in connection with the Bordeaux bank any discussion afterwards about a bag of pennies?

A. Yeah, I heard there was a bag—about fifty dollars worth of pennies come out of there.

Q. Who got that?

A. I think Bostic brought them out.

Q. Brought the bag of pennies——

Mr. BINKLEY. If Your Honor please, I object to what he thinks.

The COURT. Yes, what he thinks wouldn't be competent.

By Mr. MERRITT:

Q. Who brought the bag of pennies out?

[2025] A. I wasn't over there; I don't know.

Q. Who was the conversation with; what did you hear?

A. I just heard some of them say they brought a bag of fifty dollars worth of pennies.

Mr. BINKLEY. If Your Honor please, I think the jury ought to be instructed to disregard this; he just got through saying he thinks and then——

The COURT. Well, he'll have to identify the persons.

By Mr. MERRETT:

Q. When did you hear that? How long after the bank robbery?

A. The same day. Someone said there was fifty dollars worth of pennies. I don't know who it was.

Q. Can you narrow down who it was who said it?

A. Yeah, me, Bostic, Ferguson, Cole and Gary Ethridge.

Q. Now the Cadillac automobile——

Mr. BINKLEY. If Your Honor please, I'm still objecting.

The COURT. Overruled, I think it's competent.

By Mr. MERRITT.

Q. Now the Cadillac automobile, that white Cadillac, I believe you testified earlier, had been parked at some point [2026] at the Parkview Hospital.

A. Yes, sir.

Q. And that at some point it was brought from the Parkview Hospital over to the TB Hospital out in Bordeaux.

A. Sometime over the weekend before the bank robbery.

Q. I was going to ask you when that was; sometime over the weekend?

A. Yes, sir.

Q. Brought from Parkview to the TB Hospital?

A. Yes, sir.

Q. All right. Now, Mr. Leeman, I want to direct your attention to the day of Friday, the night of Friday, September 22, and the early morning of Saturday, September 23. First I want to ask you what you did on that night of Friday, September 22.

A. Me and my wife and Perry Patten and his wife went to the fair and come home and played rook until 11:30 or twelve o'clock and then went to bed and they left.

Q. You and Perry Patten went to the fair and did all of you come back over to your house?

A. Right.

Q. And you played cards?

A. Yes, sir.

Q. And what time did Perry Patten leave?

[2027] A. About twelve o'clock.

Q. All right, what did you do then?

A. Went to bed.

Q. Did anybody wake you up?

A. Got a call from Gary?

Q. What time was it?

A. I don't know; I was asleep.

Q. Well, how long—what time did you go to bed, about twelve o'clock?

A. About twelve.

Q. How long had you been asleep, do you think?

A. I don't know, an hour I guess.

Q. And you got a telephone call from Gary Ethridge and what did he say?

A. I had an automatic shotgun that belonged to him and he wanted me to take it down there and put it in my car.

Q. Just tell the jury about that. Said he wanted to get an automatic shotgun that belonged to him that you had?

A. Yeah.

Q. Just tell the jury what happened about that.

A. I took it down and put it in my car and just about the time I was getting it in there a police car drove by and I figured he might have seen me put it in there, and might come back and get it, and I took it up there and put it between the kitchen door and the storm door and called Gary back and [2028] told him I had left it there instead of in the car.

Q. All right. Then what happened?

A. A little while later, I heard somebody out there rattling around, and then a knock on the door, and it was Gary and Dickie, and they wanted to know how to load it.

Q. It was Gary and Dickie Self?

A. Right.

Q. And they wanted to know how to load the gun?

A. Right.

Q. And then what happened?

A. They came in the kitchen, and I showed them how to load it and they left.

* * * * *

Q. All right. Now, Mr. Leeman, these gold socks that Ferguson was wearing that we were talking about, do you know what Ferguson did with those socks after the bank robbery?

A. To the best of my recollection, we burnt them up.

Q. Why?

[2029] A. Easy to identify, I reckon.

* * * * *

[2030] * * * * *

CROSS EXAMINATION

By Mr. BINKLEY:

* * * * *

[2031–2032] * * * * *

[2033] * * * * *

Q. And at the time you made your original statement that was based upon an arrangement whereby the government is going to let you go, wasn't it?

A. That's right.

Q. But you are telling us now that you wasn't telling the truth the first time, but you are telling it now?

A. The reason I didn't say it was Bostic, I like Bostic, and I had some notions in my mind about keeping him out of that, but then I seen that I was going to have to tell the truth of it.

* * * * *

[2034] * * * * *

Q. That was after you had a talk with the district attorney where he was insisting that you tell the truth so to speak?

A. Yeah, he said he thought I ought to tell the truth.

Q. I beg your pardon?

A. He said he thought I ought to tell the truth.

Q. And if you didn't, the deal was off, isn't that right?

A. He never mentioned that the deal was off.

* * * * *

[2035–2037] * * * * *

[2038] * * * * *

By Mr. WILSON:

* * * * *

[2039] * * * * *

[2040] * * * * *

Q. Now, and a man named Bobo, were you all at TIS together?

A. Yes, we was.

* * * * *

[2041] * * * * *

Q. Now after that interview there where you of course denied any implication whatsoever in this being involved, why you were

subsequently approached by Bobo in regard to this matter, weren't you?

A. Bobo and I talked a little bit about it.

Q. Well, did Bobo deliver any message to you from the United States Attorney?

A. No, he didn't.

* * * * *

[2042–2051] * * * * *

[2052] * * * * *

Q. Well, why didn't you just go ahead and give it all back to them and say, look-a-here boys, I'm through with this thing.

A. Well, that's principally what I done, told them that.

Q. Now which of the men were they and on which times was it that they came to your house to get the money?

A. Well, Bostic and Ferguson came by and Bostic and Beard, and Ferguson, I don't know, just like you said there, I didn't make no memorandum, don't you see.

[2053] * * * * *

Mr. WILSON. Your Honor please, would we be waiving our exceptions regarding the information given by this man concerning Orlinda by cross examining him concerning it?

The COURT. Frankly, I don't understand what the objection is. I don't know what the testimony was that you are moving to strike. He made some general comment about it, and I'm inclined to believe that his general conception of the law that he's correct as stated by Mr. Binkley, but applied to this particular case, that's the question, whether it has any applicability to any particular item of testimony.

Now the motion to strike was a very vague and [2054] very general motion, and I don't think I could rule on it now without having——

Mr. WILSON. I'm not going to ask specific questions, but I do not want to withdraw my objection, but I do feel that the witness is entitled to be interrogated in the present state of the record.

The COURT. Well, it might clarify it.

By Mr. WILSON:

* * * * *

[2055–2058] * * * * *

[2059] * * * * *

Q. Now when Ferguson would come to your house to get this money, would he threaten you in any way?

A. He never did come to the house—him and Bostic came, and him and somebody else came, I don't know who it was.

[2060] * * * * *

Q. But at no time did Ferguson make any—give you any reason why you should just dole out four thousand dollars to him?

A. I heard he was disgruntled about us getting some [2061] money out of the bank job and not doing anything.

Q. Well, it was your all's plan, wasn't it?

A. That's the way Gary and I looked at it.

* * * * *

Q. Now was there ever anybody else present when you gave Ferguson substantial sums of money?

A. I don't think so.

Q. Just Bostic?

A. He was there with him one time that I recall.

* * * * *

[2062] Q. Well, you had no reason—there was no reason for Beard to be disgruntled with you over the distribution of the money from the Commerce Union Bank was there?

A. I didn't say he was.

Q. Yet you contributed to his welfare there too, or did you—was he just present with Ferguson?

A. I don't think he came with Ferguson, he ran with Bostic.

* * * * *

[2063–2065] * * * * *

[2066] * * * * *

Q. And Beard had no—nothing to do with the Bordeaux robbery that you know of?

[2067] * * * * *

Q. Just as a good Samaritan, doing a good deed, you gave Beard money that you never expected to get back?

A. Yeah, he got money from me and Gary too. Gary gave him three hundred the first time he seen him.

Q. The first time he seen him just walk up and say—

A. He was in some trouble down here in Franklin and needed to clear that up or get out on bond, and Gary gave it to him.

* * * * *

[2068–2069] * * * * *

[2070] * * * * *

REDIRECT EXAMINATION

By Mr. MERRITT:

* * * * *

[2071] * * * * *

[2072] * * * * *

Q. Now when did Ferguson come by and get some [2073] money from you? When was the last time? You said he came by twice, something like that, once with Bostic and once with Beard.

A. Wasn't long after the Bordeaux job.

Q. Wasn't long after the Bordeaux job?

A. Three or four weeks.

* * * * *

[2074] * * * * *

[2074a] * * * * *

(Whereupon, the jury was excused from the courtroom, and the following further proceedings were had in the absence of the jury:)

The COURT. I'm in agreement with Mr. Binkley as to the law. I think that's clearly the law that declarations of a conspirator, member of the conspiracy, to be binding upon other members of the conspiracy, must have been made during the course of the conspiracy, and in furtherance of the conspiracy; that is to accomplish the object of the conspiracy.

Declarations made after the termination of the conspiracy or before it begins are not admissible generally unless they may be under some circumstances admitted against the declarant himself, the person who actually made the statement, but now the difficulty arises in applying this rule to the facts of a particular case.

Now in this case we have declarations which were, as testified to by this witness, which were made by various members of the conspiracy during the time that it was going on in the nature of conversations [2075] about matters that would occur in the future or matters that had just occurred, had been accomplished, and it seems to me that conversations between the members of a conspiracy dealing with some integral part of the conspiracy itself would come within this rule, that they were made to carry out the objects of the conspiracy.

For instance, take an example of one item of testimony, this last witness where he said that those who entered the bank came back to Ethridge's home and said that they had carried it out according to plan.

Well, obviously that is a statement made in furtherance of the conspiracy, because it is conveying information to another member of the conspiracy that the plan has been accomplished. The exchange of information between the members of the conspiracy in that sense is essential to accomplish the conspiracy itself. They couldn't go and do the job and come back and meet together and just say nothing, have no conversation at all about what had taken place, so I don't have any doubt about that type of testimony. In fact there's no objection been made to that kind of testimony.

Now specifically what your motion deals with, Mr. Binkley, is the Orlinda Bank proposition, and [2076] frankly, I don't recall exactly what the testimony is that you are moving to strike, so I can't at this moment say whether it is a declaration made in furtherance of the conspiracy or not.

Now do you recall what it is you want stricken?

Mr. BINKLEY. If Your Honor please, as I recall it, Mr. Merritt asked this witness if anybody had said anything to him about the Orlinda job.

The COURT. Yes, he asked that question.

Mr. BINKLEY. And the witness again, as I recall, was a little vague about it. He couldn't tell whether a statement was made at Gary Ethridge's home or on the golf course, but then he went

on to say that the statement was made that somebody left their shoes or something as I recall, and——

The COURT. Somebody left their shoes in the bank.

Mr. BINKLEY. That was my understanding of his testimony.

Mr. MERRITT. No, he said somebody ran out of their shoes.

The COURT. Somebody what?

Mr. MERRITT. Ran out of their shoes up there.

Mr. BINKLEY. I just remembered something about shoes.

[2077] Mr. WILSON. I think that's just a colloquial expression with fellows like him.

The COURT. Did he identify any defendant who made such a statement?

Mr. MERRITT. He said one of three people, Beard, Bostic or Ethridge.

The COURT. And made at the golf course?

Mr. MERRITT. It was made at the golf course or Ethridge's house, but it was made by one of these three people after the Orlinda job, and they also told him that they left the tanks that were used in connection with the torch where they were trying to burn through the vault up in the bank, and then he said his information was that they stayed in Bowling Green, I believe that's what he said.

* * * * *

[2078–2080] * * * * *

[2081] The COURT. I'll do this, I'll ask the court reporter to go back to the testimony of Leeman, it would be near the end of his direct examination, in which he talks about the Orlinda Bank proposition, and write that up for me so I can have it in the morning, and then I'll decide what to do. I think we are all pretty vague about exactly what the witness did say in this regard.

* * * * *

[2082] * * * * *

The COURT. * * * be getting him out of jail; I don't know how he could rob banks if he's in jail.

There are certain elements of this question that will have to be passed on by the jury. Of course I will give the jury instructions that any declarations that are not made in furtherance of the conspiracy and during its course should not be considered,

but there can be a question of fact involved whether a particular declaration was made in furtherance of the conspiracy or not made in furtherance of the conspiracy, and I'm not the judge of the facts, so I'll have to leave this to the jury.

Overrule that last motion. I'll continue to take—that is the motion to strike the testimony about the three hundred dollars. [2083] I'll take under advisement, until this transcript is written up or a portion of it, until tomorrow the other motion to strike with respect to the Orlinda Bank.

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[2084] • • • • • •

Mr. MERRITT. We have Ambrose Moss, the agent with the TBI, and Perry Patten waiting—of course they'll have to come back tomorrow about this pistol business, and I just wondered if Your Honor had reached a conclusion about that.

The COURT. You mean about the admissibility? Yes, I'm not going to let that testimony in. I don't see that—they searched him and found a pistol on him relating to something that came up later. It had no—bore no relationship to the crime which was under investigation at that time, and involved in the arrest, and I don't believe that that——

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[2085–2090] • • • • • •

[2091] November 28, 1967

(Eleventh Day of Trial)

(Whereupon, at 9:20 o'clock a.m., Court was reconvened pursuant to the adjournment, and the following further proceedings were had in the absence of the jury:)

The COURT. The motion was made yesterday to strike the testimony of the witness Leeman with respect to the Orlinda Bank burglary. This portion of the testimony has been written up, and I've read it, and to summarize it, it seems that what the witness testified was that he heard some discussion about this particular burglary either on the golf course or at Ethridge's home, and that if the conversation occurred at Ethridge's home, it could have come from either one of three persons—Gary Ethridge or Bostic or Beard—and that if this

conversation occured on the golf course, it would have come from Ethridge.

Now during the course of the testimony, various objections were made in substance to the effect that the witness was not identifying any particular party and was not attributing this statement to any particular party, and in response to that objection on the [2092] part of Mr. Quillen, the Court made this statement:

"I am understanding him to say he's attributing it to Gary Ethridge, is that your testimony?

"The WITNESS. He asked me if it was at the golf course, who would I have got the information from, and I told him Gary.

"The COURT. All right.

"Mr. WILSON. We haven't determined whether it was at the golf course yet.

"The COURT. If it was at the house, who was it from?

"The WITNESS. Could have been any one of them.

"The COURT. Any one of whom?

"The WITNESS. Gary or Bostic or Beard."

And that was the end of the testimony on that subject, and the witness went on to say after the Bordeaux Bank robbery, he did not hear much discussion about burglarizing banks.

I think that type of testimony in a conspiracy trial where the witness testifies as to conversations among co-conspirators is competent even though the witness is not able to remember or recall the exact person or to identify the exact one of the conspirators who made the statement. There is authority for that proposition.

[2093] Now then, a motion was made by Mr. Binkley on behalf of his client to strike all of the testimony with respect to the Orlinda Bank job and to instruct the jury to disregard it upon the theory that these statements, if made, with respect to the Orlinda Bank job, were not made in pursuance of the conspiracy or in furtherance of the conspiracy, but I think that the statements, if they were made, and this is a question for the jury whether this testimony is entitled to any weight or value or what weight or value it may have is a jury question, but if those statements were made, it seems to me that they would be statements in furtherance of the conspiracy, because they would be statements made about one of the essential parts of carrying out the conspiracy itself, what was actually done

by the conspirators speaking among themselves, describing what had taken place.

That would be in furtherance of the conspiracy, conversations among conspirators relative to the execution and carrying out of the conspiratorial agreement is certainly in furtherance of the conspiracy, so that ground of the objection is not well taken, and I'll deny the motion.

Mr. BINKLEY. If Your Honor please, I would like to make one further comment concerning that.

[2094] To begin with the first part of the testimony, Mr. Leeman stated when asked if he was active in the planning, this is on page two, he said, I wasn't, he said, when asked did you have anything to do with it, he said, I didn't.

The COURT. That's right, but he was present, according to him, when this took place, and there's testimony from which the jury could conclude that he was a part of the conspiracy, whether he took active part in this particular job or not, and whether he withdrew from the conspiracy effectively, was actually not at the time that he heard these conversations a conspirator, would be a jury question.

Mr. BINKLEY. Of course, if Your Honor please——

The COURT. Even if he was not at that time a conspirator, if he heard the conspirators talking and conversations in furtherance of the conspiracy, that would be competent anyway.

Mr. BINKLEY. This statement quoting what the witness said:

"Heard somebody run out of their shoes down there, they left some cutting torches in the bank down there."

There is no one identified, this couldn't qualify as an admission, none of the parties were [2095] identified.

The COURT. He definitely identified this as coming from Gary Ethridge or these other two conspirators, the statements, conversations.

Mr. BINKLEY. He said, the question was, "What did you hear about the Orlinda job?"

The COURT. I understand. I've read it. It shows only the part of the conspirators as to what had happened in carrying out the Orlinda job, execution of the conspiracy.

Overrule the objection.

Recall the jury.

* * * * *

[2096] * * * * *

(Whereupon, the jury returned to the courtroom, and the following further proceedings were had in the presence of the jury:)

CHARLES A. ROUNTREE, a witness called to testify by and in behalf of the Plaintiff, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

By Mr. KNIGHT:

Q. Mr. Rountree, what is your occupation?

A. I'm employed by the Commerce Union Bank; I'm vice-president and auditor.

Q. Is the Commerce Union insured by the Federal Deposit Insurance Corporation?

A. Yes, we are.

Q. Was it so insured on April 24th of last year?

[2097] A. Yes, sir.

* * * * *

[2098] * * * * *

Q. Did you determine that there was any shortage at the Bordeaux Branch of the Commerce Union Bank after April the 24th?

A. Our audit determined there was a shortage of $29,025.17.

* * * * *

JOHN LEE WEST * * *

DIRECT EXAMINATION

By Mr. KNIGHT:

Q. Mr. West, where are you presently employed?

A. At the Commerce Union Bank in Bordeaux.

Q. What is your position out there?

A. I'm assistant manager.

Q. Was that your position as of last April the 24th?

A. Yes.

[2099] Q. Were you present in the Bordeaux Bank at the time it was robbed last April the 24th?

A. Yes, I was.

Q. Will you tell the jury approximately what time the robbery occurred to the best of your memory?

A. To the best of my memory, it was around twelve o'clock.

Q. Around twelve o'clock noon?

A. Yes.

Q. And where were you seated in the bank at the time the robbery occurred?

A. I was seated at my desk.

Q. Where is your desk located in relation to the door of the bank?

A. We have two front doors, and the door as you are coming into the bank, the door on your right; and my desk is directly in front of that door.

Q. All right. Now is this a large bank or is it rather small?

A. It's a trailer branch, rather small.

Q. In a trailer-type housing, is that right?

A. Right.

Q. And I believe that it is situated perpendicular to Clarksville Highway, is that right?

A. Right.

[2100] Q. And Clarksville Highway runs on one side and the road on the other side is Old Hyde's Ferry Pike, is that correct?

A. Yes.

Q. Now the door that your desk is opposite, is that the door toward Clarksville Highway?

A. Yes, it's the door closest to Clarksville Highway.

Q. And would you have been facing that door?

A. Yes.

Q. On this particular day?

A. Yes.

Q. Where are the tellers' cages?

A. They are located as you are looking to the bank, standing in front of it, they are located between the doors.

Q. So the tellers' cages would have been to your immediate right, is that correct?

A. Yes.

Q. In a line facing the two doors of the bank?

A. Yes.

Q. What directed your attention to the fact that your bank was in the process of being robbed on that date, Mr. West?

A. Two—well, I didn't notice two at first, but [2101] a man came in and ordinarily we don't pay too much particular attention to people coming in except to speak to them, and one man came in and stated that for everyone to get on the floor, and then I noticed a man coming from behind him.

Q. Now the first man that came in, did he have anything on his face?

A. He had what appeared to me to be a stocking.

Q. Stocking pulled over his face?

A. Yes, sir.

Q. Did he have a weapon of any kind?

A. Yes, it was a single barrel shotgun.

Q. What did you do after these individuals came into the bank?

A. Myself and all of the other employees immediately got on the floor.

Q. All right, sir. Now from your position on the floor, were you able to follow these people by the sound of their footsteps and the sound of their voices?

A. Yes, sir.

Q. Where did the man with the shotgun stand, or what did he do?

A. He stayed in front of the bank.

Q. And what about the other man?

A. He circled around me and behind my desk and behind the tellers' cages.

[2102] Q. Went behind the tellers' cages?

A. Yes.

Q. Now the man that was standing there at the front part of the bank, could you see any portion of him?

A. Just his pants, socks and shoes.

Q. His pants and his socks and his shoes?

A. That's right.

Q. Could you see them clearly?

A. Yes.

Q. Did you notice anything distinctive about this man's pants, socks or shoes?

A. Only the color of them.

Q. And what was the color—what was distinctive about the color of any of these articles of clothing?

A. His pants looked to be a type of Ivy League pants, navy blue or black, with gold socks and black loafers.

Q. He was wearing gold socks, is that right?

A. Yes.

Q. And did you particularly notice those socks? Were they pretty distinctive looking?

A. Yes.

Q. Now was this man saying anything while he was standing there?

A. He was reassuring the employees of the bank that—to don't press any buttons or buzzers, any alarms, as [2103] long as we did what we were told, we would not be hurt in any way.

Q. All right. Did he say anything to the other man?

A. He kept wanting him to hurry.

Q. Do you remember specifically what he said to this other man?

A. He told him to hurry up in case anybody should come.

* * * * *

Q. Could you tell what the number two man was doing behind the tellers' cages? Did you hear him talking or saying anything?

A. As to what he was doing; I could only relate by sound. By sound it seemed like he was opening and closing the tellers' drawers.

Q. And when he finished with the tellers' drawers, [2104] did he make any statement after that that you heard?

A. Yes, he did. Our main vault was open at that time, but we do have a smaller vault which was closed, and he wanted the combination to this vault.

Q. And he made some statements about getting the combination to the vault, is that right?

A. Yes.

Q. Was anything said in response to that statement?

A. Yes, there was the lady that has the combination to this vault was not there at this time, she is the only one who knew how to get it open.

Q. And so what was the final result of that?

A. He just had to leave it alone.

Q. Now, do you know which door these men went out of? Was it the door toward Old Hyde's Ferry Pike, or the same door they came in?

A. The same door they entered.

Q. As the number two man passed by where you were, did you see any part of him or anything connected with him?

A. Nothing but a hat.

* * * * *

Q. Did the other man make any statement about this hat?

A. Yes, he told him to pick up his hat, his hat [2105] had evidently fallen when he entered the bank, and he told him to not forget his hat.

Q. And did the other man pick up his hat?

A. Yes, he did.

Q. When he did so, did you notice anything particular?

A. He had a white shopping bag which was filled with money. He also had a Federal Reserve bag, cloth bag.

Q. Do you know what was in that cloth bag?

A. No, I didn't at the time, but we later learned it was fifty dollars worth of pennies.

Q. Fifty dollars worth of pennies?

A. Yes.

Q. Did you notice any writing on the shopping bag?

A. No, I didn't.

Q. All right, sir. How would you describe the manner of the man who was holding the shotgun? Was he calm or nervous or how did he act, do you recall?

A. The man standing in front that was holding the shotgun seemed to be very nervous.

Q. And what would you say about the man that was behind the tellers' cages?

A. He seemed to be very cool and taking his time.

Q. What period of time altogether would you say [2106] that you got a look at either one of these two men?

A. Just very briefly.

Q. Do you feel like you would possibly be able to identify them if you should see them again in person?

A. No.

* * * * *

ILDA VIRGINIA BASHAM * * *

DIRECT EXAMINATION

By Mr. KNIGHT:

* * * * *

[2107]. * * * * *

Q. Where were you working as of April the 24th?

A. Commerce Union Bank, Bordeaux Branch.

Q. You were a teller out there?

A. Yes, I was.

Q. Where was your teller's cage located out there?

A. Teller number two, the middle cage.

Q. Were you present in the bank at the time the bank was robbed last April 24th?

A. Yes, I was.

Q. When did you first realize that something was going on indicating a bank robbery was about to happen?

A. When I heard someone speak from the door and say, this is a holdup, get down on the floor.

Q. What was your reaction? What was your first reaction to that?

A. I thought they were kidding.

Q. You thought they were kidding?

A. Yes.

Q. Why did you think they were kidding?

A. Well, we had so many people to walk into the bank to say, this is a holdup, get down on the floor, because we had been held up before.

Q. Your first reaction was that this was some joker in there kidding you about it?

[2108] A. Yes, sir.

Q. Was it then your immediate reaction to get on the floor?

A. No.

Q. What did you do?

A. I looked up to the door.

Q. What did you see when you looked up?

A. I saw a man standing there.

Q. What—how was he dressed?

A. In dark clothes with hat, sunglasses, dark clothes.

Q. He was wearing a hat?

A. Yes.

Q. And he was wearing sunglasses?

A. Yes.

Q. How would you describe his build, medium build, tall, or short?

A. I would say medium build.

Q. What did you do after you saw that man?

A. I got down on the floor.

Q. Did you see any weapon in his pockets at that time?

A. Not at that time.

Q. All right. Now after you got down on the floor, what did you see and hear, just tell the jury?

[2109] A. After I got down on the floor, I heard one person start talking to everyone to keep calm and don't do anything irrational, then I heard someone come past my left into the first cage there which we call teller cage number three, I heard them picking money up out of the cash drawer, and I heard paper rustle, and then he proceeded behind me and started getting money from my drawer.

Q. And now when he proceeded behind you, did you get a look at him or any portion of him or what he was carrying?

A. When he was on my right-hand side and picking money up out of the cash drawer, I looked over to the side, and I did see the brown gloves, shopping bag, his trousers and his boots.

Q. Can you describe the boots that this man was wearing?

A. They were what I would call Beatle-ish boots.

Q. And can you be more specific about what Beatle-ish boots are?

A. They are boots with a heel with a pointed toe, but they are squared off at the most extreme area.

Q. Are they relatively high-top shoes?

A. Most of the time they are.

Q. Low boots?

A. Yes.

[2110] Q. Describe the shopping bag that this man had.

A. Yes, it was white, it had green writing, and it said, "Merry Christmas from WLAC".

Q. "Merry Christmas from WLAC"?

A. Yes, sir.

Q. Did you see at that time whether this man was carrying a weapon of any kind?

A. Yes, he was carrying it in his left hand, a revolver.

Q. You couldn't specifically describe that revolver beyond saying that it was a revolver?

A. No, I couldn't.

Q. What happened after this man passed you?

A. He proceeded to go to the further end of the bank where we have our drive-in window, and get the money from there, and then he walked over to the vault?

Q. What happened when he got to the vault?

A. He saw a smaller vault that's in the corner, and he asked us to—for someone to come and open it, and the lady that does know the combination to that was not there, and he was kind of angry at first, and said, okay, somebody come back here and open it, and whoever was standing at the door to my left at the end of the bank said, all right, one of you go back and open the vault, and Miss McBryde, another teller, told him that the lady who knows the combination to [2111] that was not there at the time.

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[2112] RAYMOND HARPER CONQUEST * * *

DIRECT EXAMINATION

By Mr. KNIGHT:

Q. What is your occupation, Mr. Conquest?

A. Groceryman.

Q. Are you a customer of the Bordeaux Branch of Commerce Union Bank?

A. Yes, sir.

Q. Were you in that bank around noon on the 24th of April of this year?

A. Yes, sir.

Q. Do you recall which of the tellers was waiting on you?

A. Miss Basham.

Q. Miss Basham?

A. That's right.

Q. Would you tell the jury what happened about noon on the 24th out there?

A. Well, I was making my deposit, and I had just gotten through making a deposit, and I heard somebody say, "everybody on the floor, this is a holdup."

Well, I thought it was just somebody pranking [2113] and I didn't pay too much attention, and directly I heard him say again, and I looked back over my shoulder, and the feller said "yeah, I mean you too, get on the floor", so I got on the floor.

Q. Was this man that was doing the talking, was he armed?